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## Going Postal: President Trump and the United States' Tumultuous Current Relationship with the Universal Postal Union, and Its Effect on the International Shipment of Opioids

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**GOING POSTAL: PRESIDENT TRUMP  
AND THE UNITED STATES'  
TUMULTUOUS CURRENT  
RELATIONSHIP WITH THE UNIVERSAL  
POSTAL UNION, AND ITS EFFECT ON  
THE INTERNATIONAL SHIPMENT OF  
OPIOIDS**

*Logan Nagle\**

ABSTRACT

*The United States has been dealing with several high-profile issues involving the post in recent years. These include momentary issues such as bomb or disease threats. Perhaps the most visible recently has been the international shipment of opioids. While many were dealing with the ever-growing effects of these drugs, most have not realized that boiling just under the surface, the current administration had further qualms with international post. On October 17, 2018, President Trump's administration suddenly announced the United States' planned withdrawal from the Universal Postal Union in 2019. The Universal Postal Union is one of the oldest multi-national treaty organizations in the world; older than the United Nations. For over 140 years the Universal Postal Union has been operating to ease the concerns and problems of the international post. Few nations have ever used the withdrawal mechanism in the treaty before; certainly not one of the founding nations nor one as large as the United States. In these unprecedented times, this Comment identifies the history of the Universal Postal Union, and evaluates potential courses of action the President may take to solve the situation.*

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## I. INTRODUCTION

The drug problem in the United States is common knowledge and one that unfortunate masses feel daily. While many individuals may envision this epidemic beginning in the shady alleys and dangerous home-labs of the world, it often has a more inconspicuous way of entering our communities—the postal system. From 2013 to 2017, over twelve tons of illicit opioids were seized entering the United States.<sup>1</sup> Yet during this time opioid-related deaths rose to over 42,000 in 2016,<sup>2</sup> and are continuing to rise—provisional results have 2017 opioid-related drug deaths nearing 50,000 people.<sup>3</sup> While efforts have been made to improve the situation, both from Customs and Border Patrol<sup>4</sup> and the United States Postal Service,<sup>5</sup> clearly the efforts have not made enough of an impact to slow the overdose epidemic.

Some congressional leaders have begun to investigate and propose solutions to the issue of drug shipments, including Senator Claire McCaskill, and Senator Rob Portman – sponsor of the Synthetics Trafficking and Overdose Prevention Act (“STOP Act”)<sup>6</sup>

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<sup>1</sup> SENATE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS, 115th CONG., COMBATING THE OPIOID EPIDEMIC: INTERCEPTING ILLICIT OPIOIDS AT PORTS OF ENTRY, at 1 (May 10, 2018) (Claire McCaskill, ranking member, authored the report) (herein S. COMM. McCaskill 2018).

<sup>2</sup> *Id.* at 2.

<sup>3</sup> NATIONAL INSTITUTE OF HEALTH, OVERDOSE DEATH RATES (revised Aug. 2018), <https://www.drugabuse.gov/related-topics/trends-statistics/overdose-death-rates>.

<sup>4</sup> S. COMM. McCaskill 2018, *supra* note 1, at 4-5.

<sup>5</sup> *See* USPS, USPS WORKING AGGRESSIVELY TO STEM FLOW OF ILLEGAL DRUGS ENTERING UNITED STATES, (Jan. 24, 2018) <http://about.usps.com/news/statements/010418.html>. The USPS self-reports a 375% increase in international postage drug parcel seizures, and an 880% increase in domestic opioid parcel seizures.

<sup>6</sup> The STOP Act of 2017 was proposed to close some loopholes with federal mail while working with in the constrains of the Universal Postal Union to acquire manifests in the form of AED (Advanced Electronic Data) from incoming shipments by private persons into the United States. *See generally* S.372 — 115th Cong. §§ 6, 7, 8, 10 (2017-2018).

of 2017.<sup>7</sup> However, in the eyes of those within the postal system the STOP Act was not yet the right solution:

The Postal Service receives international packages from foreign posts, and must therefore secure cooperation from them, including through bilateral and multilateral negotiations, to obtain AED [Advanced Electronic Data] . . . unfortunately the STOP Act currently does not recognize the relevant distinctions between commercial and postal operators, and also includes provisions that are not directly related to strengthening global security. We have suggested thoughtful modifications to the bill to make it workable and effective and which we can fully support.<sup>8</sup>

Before the House Subcommittee on Government Operations of the Oversight and Government Reform Committee, Chief Postal Officer Guy Cottrell expressed similar concerns.<sup>9</sup> Mr. Cottrell addresses the need to work closely with the Universal Postal Union (“UPU”) to create an international solution to the security issues faced at home.<sup>10</sup> The UPU is one of the oldest operating international organizations,<sup>11</sup> yet it may be one of the least well known.

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<sup>7</sup> The STOP Act of 2017, while gaining bipartisan appeal and a large number of co-sponsors, never passed from the committee stage. *But see* SUBSTANCE USE-DISORDER PREVENTION THAT PROMOTES OPIOID RECOVERY AND TREATMENT FOR PATIENTS AND COMMUNITIES ACT, 115 H. R. RES. 1099 (2018) (enacted), which absorbs the ideas and principles of Sen. Portman’s bill to create the STOP Act of 2018.

<sup>8</sup> *See* USPS, *supra* note 5.

<sup>9</sup> *See Examining the Shipment of Illicit Drugs in International Mail: Hearing Before the Subcommittee on Government Operations of the House Committee on Oversight and Government Reform*, 115th Cong. at 7 (2017) (statement of Guy Cottrell, Chief Postal Inspector, United States Postal Inspection Service) (expressing the overall usefulness and function of AED).

<sup>10</sup> *Id.* at 5.

<sup>11</sup> *See generally* Treaty Concerning the Formation of a General Postal Union, signed at Bern, *signed* Oct. 9, 1874, 1874 U.S.T. LEXIS 15. 22 Parties signed the original treaty, but after a quick expansion in membership, the organization’s name changed to the Universal Postal Union (*see* note 16 *post*).

The UPU is arguably one of the most efficient international organizations for its purpose. The UPU began operations in 1874, and is currently comprised of 192 member states which ensure that your letter arrives at its destination abroad by treating the world as one postal territory.<sup>12</sup> Yet the UPU's mail provisions as they currently stand are helping keep the international mailing of illegal drugs possible. By guaranteeing mail is delivered as originally sealed,<sup>13</sup> with no universal system for tracking offenders,<sup>14</sup> private shipments of drugs continue to feed the international opioid crisis.

As of October 18, 2018, President Donald Trump's White House has announced the United States' intention to withdraw from the UPU.<sup>15</sup> In the typical bold, hard-bargaining nature of the President, this announcement may ultimately prove to be a tactic to attract other countries with large international shipping capabilities to a negotiation. But it could also prove to ultimately be a costly bluff. The United States was one of the initiators and founders of the General Postal Union,<sup>16</sup> and has often worked closely in developing and progressing the UPU's goals of international cooperation and collaboration.<sup>17</sup> The UPU has

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<sup>12</sup> UPU, *The UPU* (18 Oct. 2018), <http://www.UPU.int/en/the-UPU/the-UPU.html> (hereinafter UPU).

<sup>13</sup> Symposium, *On the Internet and Legal Theory: The Internet is Changing International Law*, 73 CHI.-KENT L. REV. 997, 1020-21 (1998) ("The Universal Postal Union early established a norm that mail not be inspected outside the country of origin which . . . has become a customary rule honored almost everywhere. The Bern Treaty . . . guaranteed a right of transit, and obligated signatories to forward closed mail by the most rapid routes[.]")

<sup>14</sup> Although the beginning of a monitoring program has been seen in 2018. See UPU Press Release, *UPU/INCB act to help stem tide of deadly opioids* (Apr. 19, 2018), [http://news.upu.int/no\\_cache/nd/upuincb-act-to-help-stem-tide-of-deadly-opioids/](http://news.upu.int/no_cache/nd/upuincb-act-to-help-stem-tide-of-deadly-opioids/) (hereinafter UPU/INCB).

<sup>15</sup> Glenn Thrush, *Trump Opens New Front in His Battle with China: International Shipping*, N.Y. TIMES (Oct. 17, 2018), <https://www.nytimes.com/2018/10/17/us/politics/trump-china-shipping.html>.

<sup>16</sup> The General Postal Union was the original name of the UPU, when it was founded with twenty-two nations. The name changed to reflect the massive growth in treaty membership that the General Postal Union experienced over its first few years in force. UPU, *Factsheet: About the UPU, at Background Information* (Oct. 18, 2018), [http://news.UPU.int/no\\_cache/nd/factsheet-about-the-UPU/](http://news.UPU.int/no_cache/nd/factsheet-about-the-UPU/).

<sup>17</sup> UPU, *Statement of UPU Deputy Director General Pascal Clivaz on the decision by the Government of the United States of America to withdraw from the Universal Postal Union*

not been without error, creating some progressive terminal costs on the United States and other wealthy nations. Additionally, the international mailing of drugs has continued; but these detriments must be weighed against the UPU's positive aspects. The uniformity and ease of disseminating information for the public before they use the post, as provided by one single postal territory compared to 196-plus individual unilateral shipping arrangements,<sup>18</sup> weighs strongly in favor of remaining within the UPU.<sup>19</sup> The International community's solution to a web of intermingled and difficult treaty agreements on international mail was the universal law-making body, and to withdraw from that would require the United States to reach new agreements with each and every nation.<sup>20</sup> Ultimately, although withdrawing from the UPU may remove the United States from some international obligations which helped allow opioids into the country, withdrawal may create international tension and more difficulty than working with the global community to establish new boundaries and guidelines.

This comment's original intent was discussing the advantages of utilizing the UPU to help combat the international shipments of synthetic opioids which are helping to fuel the drug crisis in America. Yet in today's fast-moving modern political environment, circumstances have rendered it necessary to consider the greater function of the UPU, and the advantages and disadvantages of the recent decisions by the United States. This comment consists of three

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*treaties*, (Oct. 18, 2018), [http://news.UPU.int/no\\_cache/nd/statement-of-UPU-deputy-director-general-pascal-clivaz-on-the-decision-by-the-government-of-the-united-states-of-america-to-withdraw-from-the-universal-postal-union-treaties/](http://news.UPU.int/no_cache/nd/statement-of-UPU-deputy-director-general-pascal-clivaz-on-the-decision-by-the-government-of-the-united-states-of-america-to-withdraw-from-the-universal-postal-union-treaties/).

<sup>18</sup> Director General Bishar Hussein warns that without the UPU, the United States will be forced to renegotiate mail agreements with every individual nation. Heidi Vogt, *Global Postal System Fast-Tracks Rate Review Following U.S. Gripe*, WALL ST. J (Oct. 23, 2018, 5:50 PM.), <https://www.wsj.com/articles/global-postal-system-fast-tracks-rate-review-following-u-s-gripe-1540317224> ("If the U.S. were to withdraw from the UPU, it would lose access to global processing and coding systems that make international mail possible, and it would have to negotiate bilateral postal agreements with every individual country").

<sup>19</sup> The UPU officially has 192 member states (including the United States), UPU *supra* note 12, while the United Nations recognizes 193 member states and two non-member observers. U.N. Member States, (accessed Nov. 11, 2018), <http://www.un.org/en/member-states/>.

<sup>20</sup> *Id.*

sections—the first section will compile the critical background of the United States’ policy history with drug use, the United States Postal Service, and the Universal Postal Union. It will identify the major players in the opioid crisis, and paint in broad strokes a picture showing how the situation stands. The second will address possible solutions to the issue of issue of drugs in international mail. There are a number of possible solutions which are easily foreseeable. The final section will bring the ideas full-circle, discussing the advantages and disadvantages of the United States’ withdrawal from the UPU. It will also discuss what can be expected moving forward. It is important to understand the histories of the several issues, and how they have evolved to where they are today.

## II. BACKGROUND

### A. The Drug Epidemic and Efforts in the United States

Substance-use and the best way to regulate or control it has a long history in the United States. One of the earlier examples of this struggle is the Temperance Movement,<sup>21</sup> where the efforts against alcohol reached its greatest heights during the late 1800’s and early 1900’s.<sup>22</sup> The effort grew strong enough to pass a constitutional

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<sup>21</sup> The Temperance Movement was the name the groups of individuals who pressed for moral reforms in the United States, specifically protection of women, children, and the household. The movement was primarily led by women, and also worked for women’s suffrage, labor reform, and the return of men to jobs. One of the primary causes which gained enormous popularity in the late 1800’s and early 1900’s was temperance from alcohol, and is the cause now historically associated with the movement. See generally Erin M. Masson, *The Women’s Christian Temperance Union, 1874-1898: Combatting Domestic Violence*, 3 WM. & MARY J. OF WOMEN & L. 163 (1997); see also Marcia Yablon, *The Prohibition Hangover: Why we are Still Feeling the effects of Prohibition*, 13 VA. J. SOC. POL’Y & L. 552, 559-64 (2006).

<sup>22</sup> See generally Sidney J. Spaeth, *The Twenty-First Amendment and State Control Over Intoxicating Liquor: Accommodating the Federal Interest*, 79 CALIF. L. REV. 161 (1991). Of course, the temperance movement of that time dealt with many issues, but historically has come to be associated most directly with alcohol prohibition. See generally Erin M. Masson, *The Women’s Christian Temperance Union, 1874-1898: Combatting Domestic Violence*, 3 WM. & MARY J. OF WOMEN & L. 163 (1997); see also Marcia Yablon, *The Prohibition Hangover: Why we are Still Feeling the effects of Prohibition*, 13 VA. J. SOC. POL’Y & L. 552, 559-64 (2006) (noting the nativist undertones of the

amendment banning the sale of alcohol.<sup>23</sup> Although eventually repealed by another amendment,<sup>24</sup> the public demonstrated an expectation that the federal government would step in when the use of intoxicating or unhealthy substances created a public crisis of health and morality.<sup>25</sup>

Another major campaign aimed at the use of a particular substance was the movement against the big tobacco and cigarette industry. After a boom in the sale and use of cigarettes during the World War eras, some medical professionals began to grow wary of the frequent use of cigarettes and tobacco products.<sup>26</sup> The Surgeon General's report on Smoking and Health in 1964 was a shocking realization for the American public. The Surgeon General, besides finding a "causal relationship between excessive cigarette smoking and lung cancer,"<sup>27</sup> declared that "cigarette smoking is a health hazard of sufficient importance in the United States to warrant appropriate remedial action."<sup>28</sup> Although no amendments were made to the Constitution regarding this new health crisis, several legislative,<sup>29</sup>

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temperance movement, alongside protecting women and children from drunkards and from employment, and getting men off the streets).

<sup>23</sup> U.S. CONST. amend. XVIII § 1 (repealed 1933).

<sup>24</sup> U.S. CONST. amend. XXI. § 1. *See also* Spaeth, *supra* note 22, at 165 (The failure of the eighteenth amendment largely was due to the mistaken belief that the United States was "a single community in which a uniform policy of liquor control could be enforced") (internal citation omitted).

<sup>25</sup> This of course was not a uniform sentiment, and much like today, some resist the idea of federal control. *See* Spaeth, *supra* note 22, at 175 n. 99 ("Prior to Prohibition, Alabama residents had declared that even though liquor traffic in their state was 'as dead as the men who lived before the flood,' they would never surrender control to the federal government.").

<sup>26</sup> *See* Kenneth F. Warren, *Regulators Throughout American History Have Been Reluctant to Regulate Cigars and the FDA Still Is Today, but Why?*, 8 *PITT. J. ENVTL. PUB. HEALTH L.* 160, 164-65 (2014).

<sup>27</sup> Pub. Health Serv., U.S. Dep't of Health, Educ. and Welfare, Pub. Health Serv. Publ'n No. 1103, *Smoking and Health: Report of the Advisory Committee to the Surgeon General of the Public Health Service* at 7 (1964), available at [http://profiles.nlm.nih.gov/NN/B/B/M/Q/\\_/nnbbmq.pdf](http://profiles.nlm.nih.gov/NN/B/B/M/Q/_/nnbbmq.pdf) [herein Surgeon General Report on Smoking and Health].

<sup>28</sup> *Id.* at 33.

<sup>29</sup> *See e.g.*, Federal Cigarette Labeling and Advertising Act., Pub. L. No. 89-92, 79 Stat. 282 (1965).

administrative,<sup>30</sup> and public efforts were started.<sup>31</sup> Success has varied over time with different products as well as with different methods of smoking (such as the growing popularity of hookahs and e-cigarettes/vaping).<sup>32</sup> However, arguably the most famous United States effort against substance use remains the war on drugs.

One of the largest efforts against substance use by the federal government in scope and longest duration has been the war on drugs.<sup>33</sup> Actions against specific narcotics can be recognized as early as the 1920's.<sup>34</sup> These early efforts continued through the Eisenhower administration.<sup>35</sup> A major change with intensity and direction occurred when the war on drugs was born during the Nixon years of "law and order," and his tough-on-crime campaign.<sup>36</sup> The war on drugs has

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<sup>30</sup> See e.g., Unfair or Deceptive Advertising and Labelling of Cigarettes in Relation to the Health Hazard of Smoking, 29 Fed. Reg. 8324 (July 2, 1964)(to be codified at 16 C.F.R. 408(d)) (making it unfair and deceptive to, "to fail to disclose, clearly and prominently, in all advertising and on every pack, box, carton or other container in which cigarettes are sold to the consuming public that cigarette smoking is dangerous to health and may cause death from cancer and other diseases).

<sup>31</sup> Truth Initiative: About Us, <https://truthinitiative.org/about-us> (accessed Oct. 20, 2018).

<sup>32</sup> WHO Study Group on Tobacco Product Regulation (TobReg), Waterpipe Tobacco Smoking: Health Effects, Research Needs, and Recommended Actions by Regulators at 3, (2005) [http://www.who.int/tobacco/global\\_interaction/tobreg/Waterpipe%20recommendation\\_Final.pdf](http://www.who.int/tobacco/global_interaction/tobreg/Waterpipe%20recommendation_Final.pdf) (finding that waterpipe smoking for 1 hour can lead to inhalation of 100 cigarettes worth of chemical). See also generally Eric N. Lindblom, *Reflections on Current Food and Drug Law issues: Effectively Regulating E-Cigarettes and Their Advertising--And the First Amendment*, 70 FOOD DRUG L.J. 55 (2015) (discussing the massive growth of use and advertising of e-cigarettes, vaping devices, and similar products in the United States).

<sup>33</sup> See Claire Suddath, *A Brief History of the War on Drugs*, TIME (Mar. 25, 2009), <http://content.time.com/time/world/article/0,8599,1887488,00.html> ("the term "War on Drugs" was not widely used until President Nixon created the Drug Enforcement Administration ("DEA") in 1973 to announce 'an all-out global war on the drug menace'").

<sup>34</sup> Don Stemen, *Beyond the War: The Evolving Nature of the U.S. Approach to Drugs*, 11 HARV. L. & POLY REV. 375, 380-382 (giving a history of narcotics legislation between 1906 and the start of the war on drugs).

<sup>35</sup> Suddath, *supra* note 33 ("President Eisenhower assembled a 5-member Cabinet committee to 'stamp out narcotic addiction' in 1954[.]").

expanded multiple times since its beginning by nearly all subsequent Presidents.<sup>37</sup> President Nixon declared drug abuse as “public enemy number one” in 1971, and vowed to conduct a new “all-out offensive” in order to defeat the addiction crisis.<sup>38</sup> This offensive included presidential proposals for doubling the drug program’s budget,<sup>39</sup> creating an administrative agency,<sup>40</sup> and attempting to start coordinated domestic and international efforts to fight United States drug issues.<sup>41</sup>

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<sup>36</sup> See Jessica M. Eaglin, *The Drug Court Paradigm*, 53 AM. CRIM. L. REV. 595, 600-01 (2016).

<sup>37</sup> Some have begun to view the war on drugs as not motivated by public health, but by race and politics. See Ira P. Robbins, *Guns N’ Ganja: How Federalism Criminalizes the Lawful Use of Marijuana*, 51 U.C. DAVIS L. REV. 1783, 1793 (2018).

We knew we couldn’t make it illegal to be either against the war or blacks, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did.

(quoting Dan Baum, *Legalize It All*, Harper’s Mag. (Apr. 2016), <http://harpers.org/archive/2016/04/legalize-it-all>); but c.f. Ed Vulliamy, *Nixon’s ‘war on drugs’ began 40 years ago, and the battle is still raging*, THE GUARDIAN, (July 23, 2011, 7:03 PM) (“[T]he president’s initiative appears to have been primarily motivated not by considerations of the ghettos or Woodstock festival, but by addiction among soldiers fighting in Vietnam: the first and immediate measure . . . implemented 40 years ago this weekend, was the institution of urine testing for all US troops in Indochina”).

<sup>38</sup> See Stemen, *supra* note 34, at 375.

<sup>39</sup> See Richard Nixon, Remarks About an Intensified Program for Drug Abuse Prevention and Control (June 17, 1971), <http://www.presidency.ucsb.edu/ws/?pid=3047> (“Consequently, I am asking the Congress for \$155 million in new funds, which will bring the total amount this year in the budget for drug abuse, both in enforcement and treatment, to over \$350 million”).

<sup>40</sup> Suddath, *supra* note 33.

<sup>41</sup> See Richard Nixon, Special Message to the Congress on Drug Abuse Prevention and Control (June 17, 1971), <http://www.presidency.ucsb.edu/ws/?pid=3048>.

Since 1971, the war on drugs has possessed a dominating presence in American politics and culture. Every President after President Nixon through President Obama has continued to grow and expand the war on drugs.<sup>42</sup> Examples of significant expansions include a 1984 sentencing reform act, and a 1986 anti-drug abuse act during President Ronald Reagan's administration,<sup>43</sup> and a shift during the Clinton administration regarding public assistance programs limitations in connection with drug use.<sup>44</sup> As public opinion changed entering the new century, policy makers began to change the lens through which they viewed drug policy.<sup>45</sup> President George W. Bush began efforts to rehabilitate drug abusers and assist them post-incarceration,<sup>46</sup> while President Obama highlighted sentencing discrepancies and reduced sentencing guidelines for drug offenses.<sup>47</sup> Even the many States, initially cooperative with the war on drugs' goals have begun to scale back support and enforcement mechanisms for federal drug programs.<sup>48</sup> Notably, several states have decriminalized marijuana,<sup>49</sup> a federally classified schedule-1 narcotic.<sup>50</sup> The increase in

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<sup>42</sup> See Stemen, *supra* note 34, at 375-79 (noting the shifts in public perception, policy, and approach); *but see* James Cooper, *The United States, Mexico, and the War on Drugs in the Trump Administration*, 25 WILLAMETTE J. INT'L L. & DISPUTE RES. 234, 252-58 (2018) (noting President Obama's shift from a view of "war" to public-health crisis was well publicized, but the vast majority of his program's budget was still spent on enforcement and detention.)

<sup>43</sup> James Cooper, *The United States, Mexico, and the War on Drugs in the Trump Administration*, 25 WILLAMETTE J. INT'L L. & DISPUTE RES. 234, 253-54 (2018) (internal citations omitted).

<sup>44</sup> See Stemen, *supra* note 34, at 375-76 ("Yet, policymakers also expanded the war on drugs in new ways, passing federal legislation denying financial aid, restricting access to public housing, and blocking food stamps for people convicted of drug felonies").

<sup>45</sup> *Id.* at 376-378.

<sup>46</sup> *Id.* at 377.

<sup>47</sup> *Id.* at 377-78.

<sup>48</sup> *Id.* at 376-77.

<sup>49</sup> See Robbins, *supra* note 37, at 1784 ("marijuana is now legal in eight states and the District of Columbia," but is still illegal federally).

<sup>50</sup> See 21 U.S.C. § 812(b)(1)-(5) (2018) (identifying that Schedule I drugs (A) have a "high potential for abuse," (B) have "no currently accepted medical use in treatment," and (C) lack any "accepted safety for use"). See Robbins, *supra* note 37, at 1789 ("For example, Schedule I consists of hazardous substances such as heroin, acid, and gamma-hydroxybutyrate, a common date rape drug").

public awareness and the public shift in perception regarding the war on drugs may be found where two consequences of the policies intersect: the enormous costs socially and financially of federal drug programs, and the seeming inability to control the greater social ramifications of the issue.

The war on drugs has arguably created great societal costs within the United States. Primarily, the population of the United States prison system has increased dramatically since the beginning of the war on drugs, and the costs of maintaining the social policy are quite significant.<sup>51</sup> Despite this, the use of drugs and deaths from overdoses are still a frequent occurrence in the United States.<sup>52</sup> More than 1.6 million Americans were living in prisons in 2010, compared to approximately 200,000 in 1972.<sup>53</sup> This rapid expansion of the prison population led to the creation and use of the phrase “mass incarceration” domestically in the United States.<sup>54</sup> The exponential increase of the prison system has not only triggered a costly spiral of socioeconomic isolation amongst its victims,<sup>55</sup> but has strained the fundamental societal structures it relies upon.<sup>56</sup> The courts have had trouble keeping up with the increased number of cases which has created delays in justice for the accused.<sup>57</sup>

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<sup>51</sup> See *Inside the “War on Drugs”*, HARV. MAG., Mar. 28, 2013, <https://harvardmagazine.com/2013/03/inside-the-war-on-drugs/>; see also Eaglin, *supra* note 36, at 600-01 (noting the exponential growth of the prison system from 1972 to 2015, as well as the per-year tax-payer cost of maintaining the United States’ prison systems).

<sup>52</sup> See National Institute of Health, *supra* note 3.

<sup>53</sup> See Eaglin, *supra* note 36, at 600 (citing BUREAU OF JUST. STAT., Bulletin, *Prisoners 1925-81* tbl.1 (1982), <http://www.bjs.gov/content/pub/pdf/p2581.pdf> (reporting 196,092 prisoners in federal and state institutions in 1972); E. Ann Carson, BUREAU OF JUST. STAT., *Prisoners in 2014* 1-2 (2015), 2, at 2 tbl.1 (reporting 1,613,803 prisoners in federal and state prisons in 2010).

<sup>54</sup> *Id.* at 600 (“The exponential increase in the U.S. incarcerated population created the social phenomenon referred to as ‘mass incarceration’”).

<sup>55</sup> *Id.* at 601-03 (stating how drug incarcerations can greatly affect one’s ability to find jobs, housing, or vote.)

<sup>56</sup> *Id.* at 602-03 (showing strain on the prisons themselves, as well as the court and justice system).

The war on drugs has proven incredibly costly financially as well. Some estimates place the cost of the domestic policies as high as \$260 billion to maintain the prison system alone in 2015.<sup>58</sup> Others have estimated the total cost of the war on drugs to total over \$1 trillion since the mid-1970's.<sup>59</sup> Some place the total cost at an estimate of \$40 billion per year on enforcement, plus the cost of everyone's civil liberties.<sup>60</sup> Although the individual authors may choose different time frames, costs considered for the calculations, and the total costs in actuality, these reports show general consensus that the war on drugs has become an expensive endeavor. Considering these costs, the rate of drug use, and overdose deaths have helped lead to modern reconsiderations of the goals and directions of illicit drug policy.

Drug use and overdose deaths have continued to rise nearly five decades into the war on drugs. Survey data shows that first-time marijuana users are more numerous in 2013 than in 1988 while steadily increasing.<sup>61</sup> First-time cocaine users in 2013 outnumber the number

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<sup>57</sup> *Id.* at 602 (citing Melanie Batley, *Courts Overwhelmed as Immigration Prosecutions Set to Triple*, NEWSMAX (Apr. 24, 2013), <http://www.newsmax.com/t/newsmax/article/501140>; William Glaberson, *Faltering Courts, Mired in Delays*, N.Y. TIMES (Apr. 13, 2013), <http://www.nytimes.com/2013/04/14/nyregion/justice-denied-bronx-court-system-mired-in-delays.html> (“[J]ustice delayed is justice denied.”); Stephen Labaton, *New Tactics in the War on Drugs Tilt Scales of Justice Off Balance*, N.Y. TIMES (Dec. 29, 1989), <http://www.nytimes.com/1989/12/29/us/new-tactics-in-the-war-on-drugs-tilt-scales-of-justice-off-balance.html>).

<sup>58</sup> See Jessica M. Eaglin, *supra* note 36, at 600.

<sup>59</sup> Richard Branson, *War on Drugs a trillion-dollar failure*, CNN (Dec. 7, 2012, 6:05 PM); see also *Inside the “War on Drugs”*, *supra* note 51 (“more than \$1 trillion has been spent on more than 45 million drug arrests”).

<sup>60</sup> See Dan Baum, *Legalize it all: How to win the war on drugs*, HARPER'S MAG (Apr. 2016), <https://harpers.org/archive/2016/04/legalize-it-all/> (“dealing with addiction shouldn't require spending \$40 billion a year on enforcement, incarcerating half a million, and quashing the civil liberties of everybody”).

<sup>61</sup> See Stemen, *supra* note 34, at 381-82 (citing Ctr. For Behavioral Health Statistics & Quality, *Results from the 2002 National Survey on Drug Use and Health: National Findings* (2002) at 233-34 (Tables H.35 and H.36 presenting the number of people who reported first using marijuana or cocaine between 1965 and 2001); the number of new users from 2002 through 2013 are taken from annual reports detailing each subsequent National Survey on Drug Use and Health); (citing also Ctr. For Behavioral Health Statistics & Quality, *Results from the 2013 National Survey on Drug Use and Health: National Findings* (2014) at 61-62.)

of first-time users from 1970.<sup>62</sup> Additionally and most significantly, the United States has seen an explosion of deaths in the past decade related to opioid and synthetic-opioid use; deaths from fentanyl alone have risen from less than 5,000 in 2008,<sup>63</sup> to nearly 30,000 in 2017.<sup>64</sup> In 2016 total drug overdose deaths nearly doubled total deaths from motor-vehicle accidents.<sup>65</sup> The combination of changing views on cost, effectiveness, and results, in conjunction with the new wave of fentanyl related deaths, are leading to some questions regarding the war on drugs and the approach that the United States will take to resolve these new issues.<sup>66</sup> Synthetic drugs like fentanyl are creating major health and societal issues, and they need to be addressed correctly. One of the first opioid issues that needs be addressed is the largely invisible and untracked shipping of fentanyl in international post.

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<sup>62</sup> *See id.*

<sup>63</sup> Fentanyl, a synthetic opioid originally created for medical purposes, which is significantly more potent than morphine in its effects, is perhaps best known for being the drug that killed the artists Prince, Tom Petty, and most recently rapper Mac Miller. *See* Alex Heigl and Naja Rayne, *All About Fentanyl, the Drug That Killed Prince and Tom Petty — and Is Sweeping the U.S.*, PEOPLE (Jan. 19, 2018), <https://people.com/celebrity/fentanyl-drug-that-killed-prince-has-long-history-of-abuse/>; *see also* Joe Coscarelli, *Mac Miller Overdosed on Fentanyl and Cocaine, Coroner Says*, N.Y. TIMES (Nov. 5, 2018), <https://www.nytimes.com/2018/11/05/arts/music/mac-miller-overdose-fentanyl.html>.

<sup>64</sup> National Institute of Health, *supra* note 3.

<sup>65</sup> Rachel L. Rothberg and Kate Stith, *Law and the Opioid Crisis: The Opioid Crisis and Federal Criminal Prosecution*, 46 J.L. MED. & ETHICS 292, 292 (citing Insurance Institute for Highway Safety, Highway Loss Data Institute, General Statistics, available at <<http://www.iihs.org/iihs/topics/t/general-statistics/fatalityfacts/state-by-state-overview>>).

<sup>66</sup> *See* Stemen, *supra* note 34, at 379:

On the cusp of the third decade of the twenty-first century, the United States is poised to significantly change its approach to drug offenses . . . recent shifts in both policy and public perception around drugs also coincide with a new public health problem . . . opioid addiction has ushered in new concerns about drug abuse and state and federal approaches to drug addiction.

## B. United States Postal History

The history of mail in the United States is ongoing and built upon the idea that everyone, “no matter who, no matter where — has the right to equal access to secure, efficient, and affordable mail service.”<sup>67</sup> In fact, the Second Continental Congress created the Postmaster General before the end of the American Revolution and vested the position with the power to appoint deputies, create lines of post, and cross posts as they deem proper and necessary.<sup>68</sup> The Post Office Department was the second federal department or agency of the United States.<sup>69</sup> Before the revolution began, Benjamin Franklin served in the role of postmaster for Philadelphia and put forth extensive efforts to create maps of post office locations in the northern half of the colonies.<sup>70</sup> Part of the reason for establishing a postal system so quickly was the risk of having the colonists’ mail opened and read by the Crown’s mail service.<sup>71</sup>

Post-Revolutionary War both the Articles of Confederation and later the Constitution gave the exclusive power to establish post offices to Congress,<sup>72</sup> yet the Postmaster General answers to and is subject to the direction of the President.<sup>73</sup> One of the first acts of the second congress was to prohibit postal officials from opening letters.<sup>74</sup> Though the post office expanded rapidly, the Postmaster General did not sit with the President’s cabinet until 1829, and the department was not specifically identified as an executive department for almost a century after its existence.<sup>75</sup> The rate of postage was switched to

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<sup>67</sup> USPS, *The United States Postal System: An American History 1775 – 2006*, publication 100, Nov. 2012. [Hereinafter “An American History”].

<sup>68</sup> *Id.* at 3.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* at 5. Franklin was eventually dismissed from the position for “actions sympathetic to the cause of the colonies.”

<sup>71</sup> *Id.* at 5.

<sup>72</sup> U.S. CONST. Art. 1 § 8, cl. 7. *An American History*, *supra* note 67, at 7.

<sup>73</sup> *An American History*, *supra* note 67, at 7.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at 11.

weight-based cost,<sup>76</sup> as opposed to distance in 1863,<sup>77</sup> and the distinction of First-Class Mail was created.<sup>78</sup> The latter half of the 19<sup>th</sup> century saw the expansion of free delivery to a recipient's residence, where previously mail was only delivered to the nearest post office.<sup>79</sup> Parcel services were only added to the Post Office Department in 1913,<sup>80</sup> and the Zoning Improvement Plan Codes ("ZIP codes") were only added in 1963.<sup>81</sup> The United States Postal Service ("USPS") was the result of a rebranding effort which also put many facets of the department in the control of a new board of governors—tasked with running the USPS more like a business after several years of strikes and other financial issues in the late 1960's and early 1970's.<sup>82</sup>

Modernly, the USPS has seen ebbs and flows in profitability, and many changes in the scope of issues facing the mail. Aside from shifting profits, the USPS has now dealt with changing volume and challenging safety issues. In 2006 the USPS had over 27,300 post offices, handling over 213 billion pieces of mail a year.<sup>83</sup> The rate of mailed poisons such as powdered anthrax rose significantly after 9/11,

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<sup>76</sup> Weight-based cost is determining the price of shipping mail by its weight. *Id.* at 11 citing 12 Stat. 704.

<sup>77</sup> Distance based costs were used for the early history of the postal system, where your shipping charge was based on destination. For example, pricing from 1799 to 1815 was as follows:

- 8 cents/sheet sent 40 miles or fewer
- 10 cents/sheet sent 41 to 90 miles
- 12 1/2 cents/sheet sent 91 to 150 miles
- 17 cents/sheet sent 151 to 300 miles
- 20 cents/sheet sent 301 to 500 miles
- 25 cents/sheet sent more than 500 miles

*Id.* at 11.

<sup>78</sup> First Class Mail includes letters, second class is regular publications or advertisements, and third class is everything else mailable. An American History, *supra* note 67, at 11.

<sup>79</sup> *Id.* at 20.

<sup>80</sup> *Id.* at 16.

<sup>81</sup> An American History, *supra* note 67 at 33.

<sup>82</sup> *Id.* at 38-40.

<sup>83</sup> *Id.* at 71.

and continues to be an issue faced by the post.<sup>84</sup> Several large-scale natural disasters such as hurricane Katrina (2005) created vast areas where mail is undeliverable and created considerable back-ups in the delivery.<sup>85</sup> With the explosive growth of internet shopping and online applications, many criminal activities have also expanded in the post: child exploitation, mail fraud, credit card fraud, other scams and of course, the shipping of illegal drugs.<sup>86</sup> Most recently we have even seen domestic terrorism issues—pipe bombs being sent to prominent political persons.<sup>87</sup> These issues are handled by the USPS Office of the Inspector General.<sup>88</sup> Alongside the domestic increase in mail, international business and mail have experienced significant increases as well.

The United States, a founding member of the General Postal Union and a leader in international shipping,<sup>89</sup> has recently expressed great concerns over “last mile,” or “terminal dues”<sup>90</sup> delivery costs, as well as international shipping of opioids.<sup>91</sup> Amid these concerns, President Trump’s administration is threatening to vastly change the

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<sup>84</sup> *Id.* at 59-60. This led to biohazard detection equipment being deployed in 2004. *Id.* at 73.

<sup>85</sup> *Id.* at 60. Even after the situation normalized, considerable issue was taken with finding and rerouting mail from all of the homes and addresses lost to the users’ new locations.

<sup>86</sup> *Id.* at 65.

<sup>87</sup> See Cleve R. Wootson Jr. and Alex Horton, *What we know about the 13 pipe bombs sent to prominent Democrats and Trump critics*, WASH. POST (Oct. 26, 2018).

<sup>88</sup> An American History, *supra* note 67 at 66.

<sup>89</sup> See UPU, *Statement of UPU Deputy Director General Pascal*, *supra* note 17.

<sup>90</sup> “Last mile” or “terminal dues” costs that are incurred by a wealthier nation when shipping, as determined by the UPU within their 4-tier classification system. The receiving nation, if in a higher tier pays for costs incurred during delivery to the receiving nation, and the final steps of delivery, as opposed to the nation sending the mail paying for the delivery. Kenny Malone, *Unraveling the Mystery Behind International Shipping Rates*, NPR (Aug. 23, 2018) (Interview by Davide Greene with Altamir Linhares, employee, UPU).

<sup>91</sup> Donald Trump (@realDonaldTrump), TWITTER (Aug. 20, 2018, 1:14 PM), [https://twitter.com/realDonaldTrump/status/1031590431379865600?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1031590431379865600&ref\\_url=https%3A%2F%2Fwww.cnn.com%2F2018%2F09%2F17%2Fpolitics%2Fsenate-opioid-package%2Findex.html](https://twitter.com/realDonaldTrump/status/1031590431379865600?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1031590431379865600&ref_url=https%3A%2F%2Fwww.cnn.com%2F2018%2F09%2F17%2Fpolitics%2Fsenate-opioid-package%2Findex.html).

landscape of one of the oldest international organizations. Admittedly, the decision is guided much more by the financial aspects than the opioid issue, but the proposed withdrawal by the United States will have many ramifications for dealing with drugs carried by post. The USPS remains hesitant to changing relationships with the UPU, both in terms of the unilateral collection of AED for drug purposes,<sup>92</sup> and the decision to withdraw from the union.<sup>93</sup> The United States is willing to risk setting international postal relations back more than a century of cooperation and development by removing themselves from the UPU.

### C. Private Carriers, CTPAT, and other Considerations

There is a significant area of international shipping which does not occur within the bounds of the USPS. Private delivery and commercial shipping businesses like UPS or FedEx carry millions of deliveries a day.<sup>94</sup> Many businesses prefer to ship goods between international plants and the United States with as little interruption as possible.<sup>95</sup> In order to make the process as business friendly as possible, and ease the burden on the businesses and the United States Customs and Border Patrol (“CBP”), Customs-Trade Partnership Against Terrorism (“C-TPAT”) allows large businesses ways around the slow and costly general CBP searches.<sup>96</sup> These types of businesses

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<sup>92</sup> See USPS, USPS WORKING AGGRESSIVELY TO STEM FLOW OF ILLEGAL DRUGS ENTERING UNITED STATES (Jan. 24, 2018), <http://about.usps.com/news/statements/010418.html>.

<sup>93</sup> *Id.*

<sup>94</sup> See UPS Pressroom, UPS Fact Sheet (Nov. 11, 2018), <https://pressroom.ups.com/pressroom/ContentDetailsViewer.page?ConceptType=FactSheets&id=1426321> (claiming UPS carries an average of 20 million deliveries a day globally, and nearly 2 million domestically within the United States) 563187-193; see also FedEx Corporation, Our Story: Corporate Structure and Facts (May 31, 2018) <https://about.van.fedex.com/our-story/company-structure/corporate-fact-sheet/> (claiming FedEx has a business day average volume of greater than 14 million deliveries).

<sup>95</sup> US Customs and Border Protection, CTPAT: Your Supply Chain’s Strongest Link, (last modified Sept. 21, 2018) <https://www.cbp.gov/border-security/ports-entry/cargo-security/ctpat> (“From its inception in November 2001, CTPAT continued to grow. Today, more than 11,400 certified partners spanning the gamut of the trade community, have been accepted into the program”).

<sup>96</sup> *Id.*

and agreements operate alongside the way we think of traditional international shipping with the USPS, but face different challenges and regulations. While these are considerations within the general realm of international shipping, private carriers and United States anti-terrorism shipping agreements are not at the heart of the issues with fentanyl shipments or UPU member status; USPS is still the preferred method of shipment for delivery of international drugs into the United States.<sup>97</sup> These are important things to know and recognize within the world of international shipments however, and should be identified.

### 1. Commercial Carriers

The largest competitors in the United States shipping market include, but are not limited to, United Parcel Service (“UPS”) and Federal Express (“FedEx”).<sup>98</sup> Perhaps the most interesting distinction

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<sup>97</sup> Office of the Inspector General of the United States Postal Service, SAT-AR-18-002, Audit Report: Use of Postal Service Network to Facilitate Illicit Drug Distribution (Sept. 28, 2018) (“In fact, of 104 illicit drug websites we searched on the dark web [], 92 percent (96) indicated they used the Postal Service. On the clear web, 80 percent (16) of the 20 sites [] provided guidance on how to ship illicit drugs instructed traffickers to use the Postal Service”); see also Rothberg and Stith, *supra* note 65, at 320 (citing A. Rath, “Lethal Opiates Delivered By Mail From China, Killing Addicts In The U.S.,” NPR (Mar. 11, 2017), available at <<http://www.npr.org/2017/03/11/519649096/can-china-ban-on-deadly-opioid-save-lives-in-the-u-s>> (last visited Apr. 25, 2018)) (“members of the U.S. Senate are now attempting to stem the drug supply by requiring the United States Postal Service (USPS), mail carrier of choice for many distributors”); see also, e.g. Joe Davidson, *Postal Service — the preferred shipper for drug dealers: Websites “instructed traffickers to use the Postal Service”*, WASH. POST (Oct. 16, 2018) (finding that the USPS was the preferred method due to the inability generally to open and search packages, lack of distinct penalties, and the convenience of the delivery method).

<sup>98</sup> Rafael Gely, *A Tale of Three Statutes . . . (and One Industry): A Case Study on the Competitive Effects of Regulation*, 80 OR. L. REV. 947, 951 (2001) (“There are seven national firms in the industry: the United States Postal Service (USPS), United Parcel Service (UPS), Federal Express, Airborne Express, Purolator, DHL and Emery Worldwide”); but see Chris Isidore, *Emory Grounds Jets*, CNN MONEY (Aug.13, 2001, 3:57 PM) <https://money.cnn.com/2001/08/13/companies/emery/index.htm> (“An official of the FAA said the agency pushed for the grounding because its investigation discovered more than 100 violations of safety regulations”); see also AirCargoNews, *Cindy Miller: UPS forwarding and supply chain are pulling together* (June 2, 2016), <https://www.aircargonews.net/news/people/interviews/single-view/news/pulling-together.html> (UPS absorbed Emery Worldwide in 2004).

between USPS, UPS, and FedEx is that despite providing essentially the same function to the consumer and the public, all three are primarily guided by different pieces of legislation.<sup>99</sup> “Congress has regulated the largest, the Postal Service, under the Postal Reorganization Act (“PRA”); the National Labor Relations Board (“NLRB”) has asserted jurisdiction over the next largest, United Parcel Service (“UPS”), and a number of others under the National Labor Relations Act (“NLRA”); and then Federal Express and several others are regulated instead under the Railway Labor Act (“RLA”).”<sup>100</sup> That is not all which separates the federal postal system from its commercial counterparts.

Interestingly, while commercial carriers entering the United States by air, sea, rail, or truck have been required to provide AED and cargo information on incoming shipments since 2003,<sup>101</sup> senators were still surprised in 2018 to learn the USPS has no such requirement.<sup>102</sup> AED includes “the sender’s name and address, recipient’s name and address, contents’ description, number of pieces, and total weight.”<sup>103</sup> The USPS is not required by law to retain this information, nor provide it to CBP.<sup>104</sup> While the USPS is beginning to launch pilot programs and determine effectiveness,<sup>105</sup> unknown amounts of illicit material still

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<sup>99</sup> Rafael Gely, *A Tale of Three Statutes . . . (and One Industry): A Case Study on the Competitive Effects of Regulation*, 80 OR. L. REV. 947, 948 (2001).

<sup>100</sup> *Id.*

<sup>101</sup> U.S. GOV’T ACCOUNTABILITY OFF., GAO 17-606, INTERNATIONAL MAIL SECURITY: COSTS AND BENEFITS OF USING ELECTRONIC DATA TO SCREEN MAIL NEED TO BE ASSESSED at 2, note 3 (2017).

<sup>102</sup> 164 CONG. REC. H5163, 5168 (daily ed. June 14, 2018) (statement of Rep. Pascrell) (“I was astounded to find out that current law treats packages coming in through private carriers like FedEx and UPS differently than it does shipments through the international mail system.”).

<sup>103</sup> See GAO, *supra* note 101, at 2; see also 19 C.F.R. § 122.48 (2003).

<sup>104</sup> See GAO, *supra* note 101, at What GAO Found (“USPS is not required to provide this information to CBP”).

<sup>105</sup> *Id.* at 21.

In the first pilot (Pilot 1), USPS agreed to provide EAD to CBP for certain mail from a country with a small mail volume. CBP

flow through ports of entry. Not only is the USPS not required to gather AED, there is no uniform international requirement of AED required by the UPU; this was one concern of the United States when beginning withdrawal mechanisms from the Treaty of Bern.<sup>106</sup> Although there is work being done to ensure both federal and commercial carriers are subject to similar measures of security, they currently operate parallel to each other but separately. Only the USPS will be examined with regard to the international shipping of illicit drugs for this comment. On a similar line, the USPS is the only carrier being regarded when considering the state requirements that the United States must follow under the agreements of the UPU.<sup>107</sup>

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targets an average of five pieces of mail per day for USPS to provide to CBP for inspection.

In the second pilot (Pilot 2), USPS provides CBP with EAD on certain mail from a country with a large mail volume, from which CBP targets an average of 10 pieces of mail each day for USPS to locate and provide for inspection.

(Of note, EAD stands for Electronic Advanced Data, which is the same as AED, *supra* note 6).

<sup>106</sup> See Eliot Kim, *Withdrawal from the Universal Postal Union: A Guide for the Perplexed*, LAWFARE BLOG (Oct. 31, 2018, 2:31 PM), <https://www.lawfareblog.com/withdrawal-universal-postal-union-guide-perplexed> (stating that the rebuffing of other UPU members at a proposal for providing electronic customs data was one of the reasons President Trump and Sec. Pompeo chose to withdraw).

<sup>107</sup> However, it should be noted that while this paper focuses primarily on the USPS, corporations like UPS, FedEx, and perhaps most visibly Amazon have been fighting for postal reforms, specifically of terminal dues, since 2014. *See generally*, e.g. Kenneth Corbin, *Amazon Calls for Renegotiating ePacket Deal with China*, ECOMMERCEBYTES (June 17, 2015, 12:19 PM) <https://www.ecommercebytes.com/2015/06/17/amazon-calls-renegotiating-epacket-deal-china/>; *see also* David Z. Morris, *The U.S. is pushing to reform the international postal treaty that subsidizes Chinese shipping*, FORTUNE (July 3, 2015) <http://fortune.com/2015/07/03/universal-postal-union-reform/> (“Few solid ways forward were offered by the witnesses, representing the State Department, FedEx, USPS, and Amazon”); *see also generally* Brain Straight, *UPS, USPS praise move to pull U.S. out of international shipping treaty*, FREIGHT WAVES (Oct. 18, 2018),

## 2. C-TPAT and Business-Internal International Shipping

C-TPAT has been able to benefit over 11,400 certified partners, touching approximately fifty-two percent of United States imports by value since its inception in late 2001.<sup>108</sup> C-TPAT is an agreement that aims to strengthen both the government's national security efforts and strengthen business supply chains.<sup>109</sup> The Security and Accountability for Every Port Act of 2006 sets framework for C-TPAT, as well as a minimum set of standards one must meet to become a partner.<sup>110</sup> C-TPAT is structured to be a voluntary partnership between private sector businesses and CBP allowing the private entity to identify and gather the veracity of all actors within their own international supply chains.<sup>111</sup> This is initially at the private actor's expense, but within years of the program being launched its measured benefits were substantial, growing even greater as CBP

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<https://www.freightwaves.com/news/economics/ups-praises-trump-move-to-renegotiate-international-postal-rates>.

<sup>108</sup> US Customs and Border Protection, *supra* note 95 (“The partners . . . all of whom account for over 52 percent (by value) of cargo imported into the U.S”).

<sup>109</sup> See US Customs and Border Protection, *supra* note 95.

<sup>110</sup> See 6 USCS § 963 (LEXIS 2018), requiring minimally:

(1) demonstrate a history of moving cargo in the international supply chain;  
 (2) conduct an assessment of its supply chain based upon security criteria established by the Secretary, acting through the Commissioner, including--

- (A) business partner requirements;
- (B) container security;
- (C) physical security and access controls;
- (D) personnel security;
- (E) procedural security;
- (F) security training and threat awareness; and
- (G) information technology security;

(3) implement and maintain security measures and supply chain security practices meeting security criteria established by the Commissioner; and

(4) meet all other requirements established by the Commissioner, in consultation with the Commercial Operations Advisory Committee.

<sup>111</sup> Gregory W. Bowman, *Thinking Outside the Border: Homeland Security and the Foreward Deployment of the U.S. Border*, 44 Hous. L. Rev. 189, 212 (2007).

scrutiny grew.<sup>112</sup> Impressively, the program's credentials were soon being adopted by others nations as acceptable and comparable to their own, and nations outside of the United States began accepting a C-TPAT certification for their own preferred security passes.<sup>113</sup> C-TPAT is an important and significant part of modern international shipping, but is at its most basic a way around the standard uses and protections of international shipping searches and agreements. For this reason, C-TPAT does not affect the international shipping of fentanyl or the member status of the United States in the UPU, for the purposes of this comment.

#### D. A Brief History of International Mail

##### 1. History and Formation of the UPU

Since roughly 250 B.C.E., domestic postal systems have been active in every corner of the globe.<sup>114</sup> As humans explored and spread around the known world, their need for global communication grew. The Romans developed one of the best-known early mail systems out of necessity from the size of their empire.<sup>115</sup> Of course, in the earliest times mail was reserved for kings, nobles, and other members of the royals and elites who were educated enough to both read and write.<sup>116</sup> Accordingly, systems of the state, the church, and the occasional wealthy business or noble were the primary originators and recipients

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<sup>112</sup> Gregory S. McCue and Cecily Rose, *The Growing Benefits of C-TPAT*, LAW360 (Sept. 21, 2009) (“According to CBP, as of April 2009, C-TPAT importers now are examined on average five times less often than non-C-TPAT importers”).

<sup>113</sup> *Id.* “The potential benefits of C-TPAT membership are becoming magnified internationally as CBP has signed mutual recognition agreements with a number of other countries,” with these countries including New Zealand, Canada, Jordan, Japan, and the EU.

<sup>114</sup> UPU, *The UPU* (Oct. 18, 2018), <http://www.UPU.int/en/the-UPU/the-UPU.html>. The oldest piece of mail still preserved is from ancient Egypt. However, this may not be the oldest courier system as claims that nations like China, Persia, and Rome had older postal systems are common. In fact, some claim that China had a working postal system thousands of years before Egypt.

<sup>115</sup> HENRY HOKE, *THE FIRST BOOK OF INTERNATIONAL MAIL: THE STORY OF THE UNIVERSAL POSTAL UNION* 5-7 (Franklin Watts, Inc. 1963) (hereinafter *THE FIRST BOOK*).

<sup>116</sup> *Id.* at 5-7

of ancient and early postal systems.<sup>117</sup> The first real “mailmen” were just private individuals who society’s elites could hire to carry their messages for them to their destination.<sup>118</sup>

As western society evolved, mail and the postal systems adjusted. More common individuals gained the ability to read and write, and they desired to share in the postal systems created.<sup>119</sup> The profession of public scribe emerged, to assist those who could not write themselves, but were still sending mail.<sup>120</sup> Even though there were state systems of scribes and couriers in place, often times travelling merchants and workmen were employed at variable pricing.<sup>121</sup> Once letters arrived to the town of the intended recipient, they were often given to local butchers to act as mailman—the regular travel and rotation of butchers, as well as their trusted profession, made butchers ideal candidates for early post carriers.<sup>122</sup> Ancient Germany even created a system to support the “Butchers Postal Service” with privileges and protections to assist their jobs.<sup>123</sup>

Society was soon revolutionized again with the invention of the printing press. Alongside the societal changes brought on by the sudden burst of literacy,<sup>124</sup> the postal system changed dramatically as well.<sup>125</sup> With the massive influx of literate consumers, old postal organization and local solutions like the German Butcher system were no longer able to handle demand.<sup>126</sup> One early post-printing press attempt to organize the international post was made by the Hapsburgs

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<sup>117</sup> *Id.* at 7.

<sup>118</sup> See THE FIRST BOOK, *supra* note 115, at 7.

<sup>119</sup> *Id.* at 7.

<sup>120</sup> *Id.* at 7.

<sup>121</sup> *Id.* at 7.

<sup>122</sup> See THE FIRST BOOK, *supra* note 115, at 8-9.

<sup>123</sup> *Id.*

<sup>124</sup> See generally Jeremiah Dittmar, *Ideas, Technology, and Economic Change: The Impact of the Printing Press*, AMER. UNIV. DEPT. OF ECON. at 8-10, <https://economics.yale.edu/sites/default/files/files/Workshops-Seminars/Economic-History/dittmar-090928.pdf> (noting the advances in literacy, invention, the Renaissance, and social, political, religious life brought on by the proliferation of print material).

<sup>125</sup> See THE FIRST BOOK, *supra* note 115, at 11.

<sup>126</sup> *Id.*

of the Austrian Empire, who placed responsibility for all deliveries under the control of Francois de Taxis throughout the German territory, Austria, Italy, France, and Spain.<sup>127</sup> Some even refer to de Taxis as the “father of international mail.”<sup>128</sup> The operation of de Taxis’s system continued to be conducted by his descendants for centuries.<sup>129</sup> Even as most European nations began to develop their own postal systems, de Taxis’s system continued operations until 1867,<sup>130</sup> a mere seven years before the creation of the General Postal Union.<sup>131</sup>

While individual states began creating their own postal organizations, a need to determine pricing for delivery of letters and parcels arose. Price determination was left to postmasters or carriers based upon weight and distance to destination, so no two locations or nations shared the same rates, and further the system of measurements for distances, weights, or even which national currency to use created great contention.<sup>132</sup> Letters and parcels were often the subject of foreign taxes upon arrival into a new nation or territory.<sup>133</sup> Bilateral agreements began to form between nations regarding post and trade shipments.<sup>134</sup> The net of different agreements and treaties produced no workable rules that could be shared and duplicated however, instead complicating matters of trade and mail further.<sup>135</sup>

Innovation was needed to clear the ever-entangled web of bilateral mail agreements. One major change was the invention of the stamp: a small sticker attached to outgoing mail to show the sender had paid the fees attached to the mail’s delivery.<sup>136</sup> Sir Rowland Hill first introduced the stamp, called the “Penny Black”, into domestic mail in Great Britain in 1840 which bore the face of Queen Victoria.<sup>137</sup>

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<sup>127</sup> *Id.*

<sup>128</sup> *Id.* at 12.

<sup>129</sup> *Id.* at 12.

<sup>130</sup> *Id.* at 12.

<sup>131</sup> UPU, *supra* note 114.

<sup>132</sup> See THE FIRST BOOK, *supra* note 115, at 12.

<sup>133</sup> *Id.*

<sup>134</sup> UPU, *supra* note 114; see also THE FIRST BOOK, *supra* note 115, at 17.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

Yet while this idea gained favor and swiftly spread throughout many parts of the world,<sup>138</sup> this did not stop the issue of dead letters. The difficulties with the bilateral postal agreements led to a substantial number of letters unable to be delivered.<sup>139</sup> These dead-letters and dead-parcels grew so great so swiftly that at times they would completely inhibit post offices' ability to function or deliver their mail at all.<sup>140</sup> For mail travelling between nations with stamps, each nation crossed along the way now demanded portions of the cost; a separate fee from another treaty agreement or taxes on the delivery.<sup>141</sup> This led to a perpetuation of the cycle of undeliverable mail and expense bearing dead-letter rooms.<sup>142</sup>

The tangled agreements saw the first step towards resolution in 1862, when United States Postmaster General Montgomery Blair submitted a request to all United States recognized nations to arrange an international conference to come up with solutions to the problems of international mail.<sup>143</sup> Fifteen American-continent and European nations agreed to attend,<sup>144</sup> and the conference was held in Paris in May, 1863.<sup>145</sup> The parties who attended included: the United States, France, Austria, Belgium, Costa Rica, Denmark, Great Britain, the Hanseatic League,<sup>146</sup> Italy, the Netherlands, Portugal, Prussia, the Sandwich Islands,<sup>147</sup> Spain, and Switzerland.<sup>148</sup> The council came to an agreement on more than thirty articles or principles, but nothing

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<sup>138</sup> *Id.*

<sup>139</sup> See THE FIRST BOOK, *supra* note 115, at 17.

<sup>140</sup> *Id.*

<sup>141</sup> See THE FIRST BOOK, *supra* note 115, at 17.

<sup>142</sup> *Id.*

<sup>143</sup> See THE FIRST BOOK, *supra* note 115, at 17.

<sup>144</sup> UPU, *supra* note 114.

<sup>145</sup> See THE FIRST BOOK, *supra* note 115, at 17.

<sup>146</sup> Historically, the Hanseatic League was an alliance of predominantly German cities, but other cities of northern Europe as well, known for its late-medieval economic power and influence. Of noting is that the league is considered to have collapsed long prior, but their attendance was noted at the conference in 1863.

<sup>147</sup> History.com, *Cook Discovers Hawaii*, A&E TELEVISION NETWORKS (Aug. 21, 2018), <https://www.history.com/this-day-in-history/cook-discovers-hawaii>. The Sandwich Islands was the name originally given to Hawaii by English Captain James Cook.

<sup>148</sup> See THE FIRST BOOK, *supra* note 115, at 17-18.

binding was enacted at this time.<sup>149</sup> After the convention's closing Henrich von Stephan, Supreme Councilor of the Postal Administration of the Confederation of North Germany, published an article proposing a postal union uniting all civilized nations together under a universal congress of nations.<sup>150</sup>

The momentum of von Stephan's proposal was stymied with the outbreak of the Franco-German War (1870-1871),<sup>151</sup> but this was not the end of the union. In 1873, Switzerland invited all countries to send ambassadors or dignitaries for a congress to be held in Bern at the earliest convenience.<sup>152</sup> This conference lasted until late 1874, and when finished the 1874 Treaty of Bern was signed by twenty-two nations.<sup>153</sup> The Treaty would come into force on July 1, 1875, presenting seven key premises, summarized as:

1. Formation of a single postal territory consisting of all member nations for the purpose of international mail exchange;
2. Standardization of rates charged by each country for mail addressed to be delivered in another country of the General Postal Union's territory;
3. An abolition of sharing charges between the sending countries and receiving countries. Pre-sending charges would be compelled, and the sending country was to keep the money collected on out going mail, while paying the countries the mail travels through a set rate;
4. Guaranteed freedom of transit for post and its workers within the territory of the General Postal Union;

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<sup>149</sup> *Id.* at 18.

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> Treaty Concerning the Formation of a General Postal Union, *supra* note 11. These nations include: The United States, Germany, Austria-Hungary, Belgium, Denmark, Egypt, Spain, France, Great Britain, Greece, Italy, Luxembourg, Norway, The Netherlands, Portugal, Romania, Russia, Serbia, Sweden, Switzerland, and Turkey. *See also* THE FIRST BOOK, *supra* note 115, at 20.

5. Establishment of a dispute settling process between nations with mail-related conflicts;

6. Establishment of the International Bureau, the central office of the General Postal Union whose cost was to be shared amongst all members of the treaty; and

7. Establishment of a regular series of meetings for the Congress of the General Postal Union to revise the acts and discuss common points of interest.<sup>154</sup>

After the General Postal Union's provisions took force in 1875, many nations rapidly joined the treaty: at the first meeting of the Union's congress in 1878, the name was changed to the Universal Postal Union to reflect the change in the nature of the organization.<sup>155</sup> By 1957, there were 117-member states encompassing over one quarter million post offices globally.<sup>156</sup> Today the UPU has 192 member states, all of whom have been approved by two-thirds of existing members at the time of their admission.<sup>157</sup>

Terminal dues, or "last mile" charges, at the heart of the United States' decision to withdraw from the UPU began in 1969.<sup>158</sup> These charges apply to mail and parcels under 2 kilograms in weight.<sup>159</sup> There are discrepancies in these dues, dependent upon the nation which is shipping the item and who is receiving it.<sup>160</sup> These nations are categorized into one of four broad categories based upon the

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<sup>154</sup> See generally Treaty Concerning the Formation of a General Postal Union, *supra* note 11. These agreements are shown as summarized in THE FIRST BOOK, *supra* note 112 at 20-21. Although occasionally delayed by war or other international catastrophe, the UPU has held its meetings for member states with great regularity for nearly 150 years now. See THE FIRST BOOK, *supra* note 115, at 21.

<sup>155</sup> UPU, *supra* note 114; See THE FIRST BOOK, *supra* note 115, at 20.

<sup>156</sup> See THE FIRST BOOK, *supra* note 115, at 21-22.

<sup>157</sup> UPU, *supra* note 114; see also THE FIRST BOOK, *supra* note 115, at 17.

<sup>158</sup> Greg Ip, *Send Word: Trump Is Right to Fight Some Global Rules*, WALL STREET J. (Oct. 24, 2018, 9:00 AM).

<sup>159</sup> JANET M. SORENSEN, OFFICE OF THE INSPECTOR GENERAL OF THE USPS, INTERNATIONAL TERMINAL DUES WHITE PAPER at i n. 1(2014).

<sup>160</sup> *Id.*; see Greg Ip, *supra* note 158.

development of their economy.<sup>161</sup> One of the main contentions of the President is that nations such as China, Brazil, India, and Russia, are still labelled as developing economies even though they are some of the world's largest.<sup>162</sup> These designations mean that the United States pays more for incoming mail from these nations, and to ship goods to these nations. Terminal dues are decided upon in the UPU's Congress.<sup>163</sup>

## 2. Structure of the UPU and the Modern UPU

The UPU consists of several bodies. First is the Congress, the general body of the UPU which is the Union's supreme authority.<sup>164</sup> The Congress generally meets every four years, with exceptions having been made previously for war, but rarely an additional "Extraordinary Congress" has been added.<sup>165</sup> Recently, the UPU held the second-ever "Extraordinary Congress" in 2018 in Addis Ababa, Ethiopia.<sup>166</sup> Approved by two-thirds of the modern 192 members, the "Extraordinary Congress" was held to further discuss some critical issues, such as the furtherance of AED, and UPU reforms.<sup>167</sup> Held for five days in September, this was the first Extraordinary Congress in over a century.<sup>168</sup>

The second body of UPU is the Council of Administration ("CA").<sup>169</sup> The CA consists of forty-one member countries, who meet annually in Bern, Switzerland.<sup>170</sup> Of note, the United States is not a

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<sup>161</sup> *Id.*

<sup>162</sup> *Id.* at 8.

<sup>163</sup> *Id.* at i.

<sup>164</sup> UPU, About Congress (last accessed Feb. 6, 2018), <http://www.upu.int/en/the-upu/congress/about-congress.html> (hereinafter UPU Congress).

<sup>165</sup> UPU Press Release, Factsheet on the Second Extraordinary Congress (Mar. 9, 2018), [http://news.upu.int/no\\_cache/nd/upu-factsheet-on-the-second-extraordinary-congress/](http://news.upu.int/no_cache/nd/upu-factsheet-on-the-second-extraordinary-congress/) (hereinafter Second Extraordinary Congress).

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> UPU, Council of Administration Member Countries (last accessed Feb. 6, 2018), <http://www.upu.int/en/the-upu/council-of-administration/member-countries.html> (hereinafter CA Members).

<sup>170</sup> *Id.*

member-state to the CA.<sup>171</sup> The CA exists to make sure that the UPU can react to changes in the postal and world environments swiftly while between congresses.<sup>172</sup> The CA also has the power to approve Operations Council proposals, and yearly or biennial strategies and budgets.<sup>173</sup>

The Postal Operations Council (“POC”) is the third body of the UPU, which the UPU identifies as its “technical and operational mind.”<sup>174</sup> The POC consists of forty member countries that were elected by the Congress.<sup>175</sup> Members also meet annually in Bern, and work with the economic, commercial, operational, and technological considerations of the postal industry.<sup>176</sup> The United States is currently a member of this body, pending withdrawal later in 2019, assisting the organization to postal services modernize and upgrade their products and services.<sup>177</sup> Additionally, the POC has created two smaller cooperatives, the Telematics Cooperative,<sup>178</sup> and the EMS (Express Mail Service) Cooperative.<sup>179</sup> These two cooperatives work more operationally with the network of member countries and post offices, and help to ensure the integration and operation of the UPU’s goals and initiatives.

Lastly, there is the International Bureau.<sup>180</sup> Also located in the UPU’s Bern headquarters, the International Bureau exists to serve a

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<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> UPU, About Postal Operations Council (last accessed Feb. 6, 2018), <http://www.upu.int/en/the-upu/postal-operations-council/about-poc.html> (hereinafter POC).

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> UPU, About Postal Technology Centre (last accessed Feb. 6, 2018), <http://www.upu.int/en/the-upu/postal-technology-centre/about-ptc.html> (hereinafter PTC).

<sup>179</sup> UPU, About EMS (last accessed Feb. 6, 2018), <http://www.upu.int/en/activities/ems/about-ems.html> (hereinafter EMS).

<sup>180</sup> UPU, *supra* note 114.

secretariat function.<sup>181</sup> The Bureau provides logistical and technical support, acts as a liaison, as well as an information and consulting center.<sup>182</sup> In recent years, the UPU has seen the International Bureau take on a stronger role in leadership and execution, as it is often a leader in the implementation of new technology, monitoring international quality and efficacy, and contains a number of regional coordinators to work with the many member countries of the UPU.<sup>183</sup> The International Bureau consists of a staff of 250 employees from roughly fifty countries.<sup>184</sup>

The UPU has been challenged in recent years to keep up with a changing world, but the UPU continues to be proactive and reactive. The UPU signed an agreement with the nation of Morocco to allow for the easier exportation of goods from small and medium enterprises.<sup>185</sup> The UPU started to work with the Intergovernmental Organization for International Carriage formally.<sup>186</sup> An agreement was signed with Ethiopia to create an East-African hub of ecommerce working in concert with the Pan-African Postal Union.<sup>187</sup> UPU leaders continued to push for the economic interest and involvement of many nations who traditionally do not have access to modern financial institutions.<sup>188</sup> An event was hosted to bring together world postal CEO's in May during the UPU Istanbul Congress.<sup>189</sup> Additionally, the UPU explored more into data and privacy laws, communications and

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<sup>181</sup> UPU, About International Bureau (last accessed Feb. 6, 2018), <http://www.upu.int/en/the-upu/international-bureau/about-ib.html> (hereinafter Int'l Bureau).

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> UPU Press Release, *UPU, Morocco Sign Trade Facilitation Agreement* (Sept. 14, 2018), [http://news.upu.int/no\\_cache/nd/upu-morocco-sign-trade-facilitation-agreement/](http://news.upu.int/no_cache/nd/upu-morocco-sign-trade-facilitation-agreement/) (hereinafter Morocco Agreement).

<sup>186</sup> UPU, UPU Looks Back to Move Forward (Jan. 11, 2019), [http://news.upu.int/no\\_cache/nd/upu-looks-back-to-move-forward/](http://news.upu.int/no_cache/nd/upu-looks-back-to-move-forward/) (hereinafter UPU Looks Back).

<sup>187</sup> UPU, *Ethiopia joins Ecom@Africa Initiative* (Dec. 19, 2018), [http://news.upu.int/no\\_cache/nd/ethiopia-joins-ecomafrika-initiative/](http://news.upu.int/no_cache/nd/ethiopia-joins-ecomafrika-initiative/) (hereinafter Ecom@Africa).

<sup>188</sup> *See id.*; *see also* UPU, *supra* note 174.

<sup>189</sup> *Id.*

ecommerce, and expanded its green protocols as part of the Sustainable United Nations (“SUN” group).<sup>190</sup> Even further, the UPU began to take steps towards fixing the international drug shipment issue.

In early 2018, the UPU signed an agreement with the International Narcotics Control Board (“INCB”) to cooperate in stopping the international shipping of fentanyl-related substances.<sup>191</sup> INCB President Dr. Viroj Sumyai noted, “Today’s global drug landscape is far more complex and challenging than 30 years ago, when the last international drug control treaty was signed. Now there is a specific urgency to stem the increasing illicit flow of deadly fentanyl-related substances wherever they are encountered.”<sup>192</sup> As explained by Tripp Brinkley, UPU’s security manager, “Our partnership with INCB sends a strong message to drug traffickers—stay away from the Post. Synthetic opioids, including fentanyl, carfentanil, and other toxic substances, are a direct threat to the safety of the postal supply chain.”<sup>193</sup> The two international bodies agreed to share specific information and intelligence on the movement of drugs and other dangerous chemicals.<sup>194</sup> The agreement with the INCB, as well as the previously mentioned actions, show the desire and willingness of the UPU to ensure their missions are successful and impactful to the global community.

#### E. Summary of the Background in the Issues

There are currently significant issues with illegal drugs entering the United States via international post, exacerbating the opioid crisis that claimed over 42,000 lives in 2016.<sup>195</sup> These issues have begun to

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<sup>190</sup> *Id.*

<sup>191</sup> See UPU Press Release, *UPU/INCB act to help stem tide of deadly opioids* (Apr. 19, 2018), [http://news.upu.int/no\\_cache/nd/upuincb-act-to-help-stem-tide-of-deadly-opioids/](http://news.upu.int/no_cache/nd/upuincb-act-to-help-stem-tide-of-deadly-opioids/).

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

<sup>195</sup> SENATE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS, 115TH CONG., COMBATING THE OPIOID EPIDEMIC: INTERCEPTING ILLICIT OPIOIDS AT PORTS OF ENTRY, at 1

garner attention from several Congressmen and Congresswomen,<sup>196</sup> leading to the proposal of the STOP Act of 2017 by Senator Rob Portman (R-OH).<sup>197</sup> The STOP Act saw some resistance from the USPS over concerns of interplay with the UPU and other operational concerns,<sup>198</sup> but the Act ultimately absorbed into and passed with a larger piece of legislation, the SUPPORT Act of 2018.<sup>199</sup>

The United States were not alone in their concern for the problem with mailing illicit substances. After nearly 144 years of operation,<sup>200</sup> the UPU observed the growing problem with opioids globally. The problems experienced by the United States were specifically noted as exceptionally worrisome, and the UPU has begun an effort to modernize their approach to narcotics.<sup>201</sup> The issues regarding the interplay of the SUPPORT Act and the UPU would ultimately be pushed aside by another action of the President.

President Trump's Secretary of State Mike Pompeo announced on October 18, 2018, the United States' activation of the withdrawal mechanism from the UPU.<sup>202</sup> This decision was due primarily to disagreements of terminal dues and the conflicting economic interests of the United States.<sup>203</sup> Although this has inspired fast-tracked terminal

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(May 10, 2018) (Claire McCaskill, ranking member, authored the report) (hereinafter S. COMM. McCaskill 2018).

<sup>196</sup> *Id.*

<sup>197</sup> S.372 — 115th Cong. §§ 6, 7, 8, 10 (2017-2018). The STOP Act of 2017, while gaining bipartisan appeal and a large number of co-sponsors, never passed from the committee stage.

<sup>198</sup> See USPS, USPS WORKING AGGRESSIVELY TO STEM FLOW OF ILLEGAL DRUGS ENTERING UNITED STATES (Jan. 24, 2018), <http://about.usps.com/news/statements/010418.html>. (Last visited 12/16/2018) (noting the concerns of the STOP Act in concert with the UPU).

<sup>199</sup> See SUBSTANCE USE-DISORDER PREVENTION THAT PROMOTES OPIOID RECOVERY AND TREATMENT FOR PATIENTS AND COMMUNITIES ACT, 115 H. R. RES. 1099 (2018) (enacted), which absorbs the ideas and principles of Sen. Portman's bill to create the STOP Act of 2018.

<sup>200</sup> See UPU, *supra* note 114.

<sup>201</sup> See UPU/INCB, *supra* note 191.

<sup>202</sup> Glenn Thrush, *Trump Opens New Front in His Battle with China: International Shipping*, N.Y. TIMES (Oct. 17, 2018), <https://www.nytimes.com/2018/10/17/us/politics/trump-china-shipping.html>.

<sup>203</sup> See *e.g.*, *Id.*

due rate-review discussions,<sup>204</sup> the United States has not yet announced any intention of stopping their withdrawal from an organization that they were crucial in creating. While negotiations are ongoing, the public is left to speculate solutions to the dangers of opioids in the mail, and the future reliability of their post.

### III. POSSIBLE SOLUTIONS TO THE INTERNATIONAL SHIPPING OF DRUGS

The UPU has recently acknowledged the seriousness of the international post when dealing with narcotic drugs.<sup>205</sup> Further, the UPU, when beginning to monitor and gather information on the shipping of fentanyl-like substances specifically cite the struggles facing the United States.<sup>206</sup> The UPU also has created several other commissions, become invested in many economic and ecommerce unions, and joined in a partnership with international rail shipping organizations, making their organization more approachable and responsive to operational issues and concerns on the ground.<sup>207</sup> The timing is ideal for the United States to choose a working partnership in the fight against the international shipping of opioids, if they choose to stop the process of withdrawal. This may ultimately be the best option, considering the recent recognition of the drug issue by the international community, the expanded network of resources, and the ability of the UPU to treat the entire globe as a single postal territory. However, if the United States proceeds with the withdrawal, there may be efforts that they can take unilaterally as well. Assuming that the United States does choose to remain a member country of the UPU, there are several efforts that the United States and UPU could collaborate on to help curb the drug epidemic.

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<sup>204</sup> Heidi Vogt, *Global Postal System Fast-Tracks Rate Review Following U.S. Gripe*, WALL ST. J (Oct. 23, 2018, 5:50 PM), <https://www.wsj.com/articles/global-postal-system-fast-tracks-rate-review-following-u-s-gripe-1540317224>.

<sup>205</sup> See UPU/INCB, *supra* note 191.

<sup>206</sup> *Id.*

<sup>207</sup> See *supra* section II. D. 2.

A. The United States Works with the UPU to Expand and Reform the Use of Advanced Electronic Data Alongside Other Prevention Techniques

One of the United States' primary wishes when attempting to control drugs in the mail is the expanded recordation and use of AED.<sup>208</sup> AED includes the sender's full name and address (including full business name), the recipient's full name and address, the stated content description, unit of measure and quantity, weight, value, and date of mailing.<sup>209</sup> While private shipping companies already retain this type of data, the USPS was not required to until the SUPPORT Act of 2018 passed.<sup>210</sup> The United States provides AED on ninety percent of its outgoing mail currently, and is working with a few of its largest international mailing partners to receive AED more frequently.<sup>211</sup> AED is invaluable for discovering trends in mail patterns and suspect individuals, and the effort to utilize AED is not something recognized only by the United States:

The 26th Universal Postal Congress agreed on the classification of items by content, with specific rates to reflect the growing number of goods being shipped as small packets and the cost of handling and delivering them. It also agreed to introduce barcodes on small packets containing goods, which will be used to communicate vital electronic advance data (EAD) between supply chain partners, ensuring that goods can pass through the mail stream uninterrupted.<sup>212</sup>

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<sup>208</sup> See generally S.372 — 115th Cong. §§ 6, 7, 8, 10 (2017-2018). The STOP Act of 2017 was proposed to close some loopholes with federal mail while working with in the constrains of the Universal Postal Union (but not properly recognizing distinctions) to acquire manifests in the form of AED (Advanced Electronic Data) from incoming shipments by private persons into the United States.

<sup>209</sup> See Statement of Guy Cottrell, *supra* note 9, at 4.

<sup>210</sup> See SUBSTANCE USE-DISORDER PREVENTION THAT PROMOTES OPIOID RECOVERY AND TREATMENT FOR PATIENTS AND COMMUNITIES ACT, 115 H. R. RES. 1099 (2018) (enacted).

<sup>211</sup> See Statement of Guy Cottrell, *supra* note 9, at 4-5.

<sup>212</sup> See Second Extraordinary Congress, *supra* note 165.

By remaining a member of the UPU, the United States would not only be able to influence the growth and development of the UPU's system of AED collection, but also work multilaterally in stopping new drug shipments. With the ability to be collect, process, and monitor global AED more frequently, trends in shipping opioids would surely appear. The United States, as a member country, would be able to receive reports on these trends and immensely benefit in their effort to curb opioid related injuries and deaths.

Another way to cooperate with the UPU is to develop a system of exigency checks, allowing temporary lifts in the requirement of closed mail delivery. Closed mail delivery has been guaranteed since the earliest days of the UPU,<sup>213</sup> and is arguably an assumed norm of the international postal community 144 years later. While this is an important consideration for both individual privacy and international respect, it is easy to assume the inability to open packages allows illegal opioids to occasionally ship undetected. In crisis situations such as the opioid epidemic, it would be beneficial to establish a test or rulebook for more invasive searches of packages. The test or system for searching would need to be reasonable, objective, and respectful to those using the post as well as to international communities. By continuing to work with the UPU congress, the United States would be able to identify and coordinate a solution of this type with greater ease compared to developing a system for each and every nation the United States shares international post with. This combination of increased AED to track common addresses and names shipping opioids, and the ability to more freely search packages similar to the data collected would reduce the amount of fentanyl reaching United States citizens.

Inevitably, while these efforts may produce greater communication and information, disagreements will occur. Remaining in the UPU provides a ready solution to these conflicts by having all

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<sup>213</sup> Symposium, *On the Internet and Legal Theory: The Internet is Changing International Law*, 73 *CHI.-KENT L. REV.* 997, 1020-21 (1998) (“The Universal Postal Union early established a norm that mail not be inspected outside the country of origin which . . . has become a customary rule honored almost everywhere. The Bern Treaty . . . guaranteed a right of transit, and obligated signatories to forward closed mail by the most rapid routes[.]”).

members agree to arbitration in the case of disputes.<sup>214</sup> Again, once withdrawn from the structure of the UPU, each individual international shipping agreement the United States enters would have to negotiate its own dispute resolution mechanism. The United States typically has challenged the jurisdiction of international courts when there was an adverse result.<sup>215</sup> Dispute resolution would be a possible hurdle in the negotiations of new bilateral agreements, while the UPU has retained their arbitration agreement for 144 years. The UPU treaty article sixteen dispute resolution mechanism is a concern both regarding the United States accepting its authority as opposed to taking unilateral actions to search extra mail for opioids, and potentially for claims by the United States against other nations. If the increase in AED leads to patterns of another state disregarding or aiding in the shipment of illegal opioids, they would already be bound to the jurisdiction of the arbitrators by the Treaty of Bern. In this respect, the ability for the United States to quickly seek redress would be best served by working with the UPU.

Lastly, while terminal dues certainly are expensive, showing negative effects on the profitability of the USPS,<sup>216</sup> they may not be worth risking the larger percentage of funds which are returned from the USPS conducting international post.<sup>217</sup> The ability to record greater amounts of data faster and more reliably, work through solutions within the international community as opposed to against it, and a binding dispute resolution mechanism lend credence to the argument

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<sup>214</sup> Treaty Concerning the Formation of a General Postal Union art. XVI, signed Oct. 9, 1874, 1874 U.S.T. LEXIS 15.

<sup>215</sup> See generally, e.g., Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. (June 27) (discussing the many challenges the United States made regarding the ICJ's jurisdiction). Of note to the ICJ specifically, consent is required for the court to have jurisdiction over a party. *Id.* at 44 ("It is necessary because the Court's jurisdiction, as it has frequently recalled, is based on the consent of States, expressed in a variety of ways including declarations made under Article 36, paragraph 2, of the Statute").

<sup>216</sup> Greg Ip, *Send Word: Trump Is Right to Fight Some Global Rules*, WALL STREET J. (Oct. 24, 2018, 9:00 AM).

<sup>217</sup> Losses from terminal dues were roughly \$135 million in 2016, *Id.*, while the income from international mail to the USPS in fiscal year 2016 was reported at over \$2.6 billion. See U.S. POSTAL SERVICE REPORTS FISCAL YEAR 2017 RESULTS at 8 (Nov. 14, 2017).

that the United States should remain in the UPU to combat the opioid crisis. The efficiency and cooperation of the established system supports allowing the UPU some time to figure out solutions to these problems before withdrawing entirely. The risk of losing the profit from international use of the USPS because of the inconvenience of terminal dues is great enough reason to require serious consideration.

#### B. The United States Works Unilaterally to Solve its Drug Epidemic

If the withdrawal continues as planned, however, the United States can attempt to act unilaterally to try to solve its postal opioid problems. The policies of the war on drugs would have to be considered,<sup>218</sup> as well as the different methods of arranging international shipping to prevent opioid delivery without the UPU. There are several ways which these issues can be addressed; perhaps the simplest in idea is to merely remove the USPS and federal government from international shipping.

The USPS and its commercial carriers such as UPS and FedEx operate on different regulatory schemes.<sup>219</sup> As such, the UPS, FedEx, and other commercial carriers are already required to collect and process large amounts of AED.<sup>220</sup> Additionally, the United States already requires stricter compliance and searches from commercial characters regarding drugs, than for the USPS.<sup>221</sup> Being commercial entities, these businesses already charge their own rates for transporting parcels internationally, outside of the UPU's structure of terminal dues. The statutory framework and business models are already established, and theoretically, the United States could simply allow these private entities to conduct all international mail.<sup>222</sup> This course of action is unlikely though, because it would result in the loss

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<sup>218</sup> See Section II. A. *supra*.

<sup>219</sup> Rafael Gely, *A Tale of Three Statutes . . . (and One Industry): A Case Study on the Competitive Effects of Regulation*, 80 OR. L. REV. 947, 948 (2001).

<sup>220</sup> See 164 CONG. REC. H5163, *supra* note 102, at 5168.

<sup>221</sup> See R. Richard Geddes, *Universal Postal Union and mail-order opiates: Viewpoint Interview with James Campbell*, AMER. ENTERPRISE INST. (Oct. 4, 2018).

<sup>222</sup> Nick Zaiac, *Four possible outcomes of America's withdrawal from the Universal Postal Union*, NATIONAL EXAMINER (Nov. 17, 2018, 12:00 AM) ("One potential option would be for USPS to cede the market to foreign post offices to the private sector").

of the USPS's income from their international operations, which is significant.<sup>223</sup> Allowing these commercial carriers to conduct all of the United States' international post could be a viable way to help minimize the amount of opioids mailed into the United States, because of the extra scrutiny they face under law. However, due to the financial loss the USPS would face among other factors, it is highly unlikely.

The United States is more likely to adopt a course of action that is more proactive unilaterally. The SUPPORT Act and similar legislation to be passed would likely increase punitive actions with regard to trafficking drugs, especially opioids and their synthetics, via the post. Also, following the SUPPORT Act the required amount of AED and when it must be provided would likely be broadened as well. This would create extra positions for the USPS and CBP in order to maintain, store, and analyze the AED, as well as extra CBP officers to conduct searches and find contraband. While these two domestic efforts would certainly be a large change in the way the war on drugs is administered, they would only be as effective as the new international framework that the United States would have to establish.

Without the overarching international postal agreements of the UPU for the first time in nearly 150 years, the United States would be left to renegotiate postage with individual nations or groups of nations, instead of treating the world as one postal territory. The explosion of the internet and e-commerce has vastly changed the models for international post and parcels over the last few decades.<sup>224</sup> To refuse participation in international post would not be possible, and will be extremely detrimental to the United States economy. In its negotiations for new postal arrangements, the United States would have to be explicit about the extent of cooperation that they wish to receive with AED and drug enforcement. These negotiations would also have to include the status of mail delivered, whether sealed or searched, and the spectrum of repercussions for those who are found to violate policies on shipments of opioids, and who punishes the offenders.

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<sup>223</sup> See U.S. POSTAL SERVICE REPORTS FISCAL YEAR 2017 RESULTS at 8 (Nov. 14, 2017) (reporting the income in fiscal year 2017 from international post to be over \$2.7 billion).

<sup>224</sup> See R. Richard Geddes, *supra* note 221.

This would likely be a lengthy process, varying heavily from region to region, or nation to nation.

These issues have been taken for granted with the United States' current status in the UPU. Establishing the system of bilateral or multilateral post agreements will take an indeterminate amount of time that will lead to uncertainty for the economy and investors. While the negotiations may ultimately do away with terminal dues, which subsidize the shipping of goods for other nations, the cost of time lost and uncertainty in the system may outweigh the potential benefits of unilateral action. A greater uncertainty is the risk that different nations will have different agreements with regard to AED and postal security. There is nothing to suggest that these bilateral negotiations would make the tracking and detection of drugs from every nation better. There is even the risk that these negotiations create a system where addresses from a particular nation become a funnel for drug traffickers to ship opioids more safely from.<sup>225</sup>

While the United States may be able to take stricter, more hardline stances on the issues of drugs in the international post while acting primarily unilaterally, there is a large amount of risk and uncertainty associated with the approach. Additionally, the approach will take a significant amount of time to organize, while still allowing drugs to reach the United States. Working with the UPU, a process which also takes time, but if established, a solution can be applied more broadly and with greater resources. For these reasons, it would appear that remaining with the UPU and working vigorously with their new opioid efforts would currently be the best option to proceed. There are other factors besides the issue of opiates in the post which will heavily factor in the ultimate course of action for the United States, and many

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<sup>225</sup> This is the same problem that many believe exists today, where China is a funnel area for mailed opiates. See Reality Check Team, *Fentanyl crisis: Is China a major source of illegal drugs?*, BBC NEWS (Sept. 24, 2018) (calling attention to President Trump and European leader's tendency to place responsibility on China for the majority of synthetic opioids in the mail). *But cf.*, Bryce Pardo and Peter Reuter, *China Can't Solve America's Fentanyl Problem: Why a Crackdown Won't Fix the Opioid Crisis*, FOREIGN AFFAIRS (Jan. 2, 2019) (discussing how the problem with drug abuse and addiction in the US goes beyond the scope of the importation of Chinese drugs).

costs and benefits associated with both remaining a UPU member-country or withdrawing.

#### IV. THE BENEFITS TO EITHER REMAINING IN OR LEAVING THE UPU

The Treaty of Bern dictates that withdrawal from the UPU will not be complete until one year from the time which the process was announced.<sup>226</sup> While this is occurring, the United States must consider the costs and benefits of many things: the cost of terminal dues, the impact of a sudden change to a totally independent international mail system for the first time in nearly 150 years, public perception of the action, and the effects that this would have on our international partners and allies, as well as our treaty agreements are among the primary considerations. Yet there are some conceivable benefits to both cancelling and continuing with the withdrawal. When both are evaluated critically the greater benefit may lay with remaining a member of the UPU, but ultimately this administration must make the decision they feel best. If the recent government shutdown is any indication,<sup>227</sup> the negotiations will surely continue as long as necessary until the administration feels a satisfactory answer is reached.

##### A. Costs and Benefits of Remaining a UPU Member Country

The first possible outcome of the United States' surprise announcement to begin its UPU withdrawal is that President Trump and his administration are just using the threat of withdrawal as a bargaining chip, and as the one-year waiting period nears the United States chooses ultimately to cancel its planned exit. In fact, this may ultimately be the desired outcome of the whole ordeal. "The U.S. has said it hopes to negotiate a solution that keeps it from having to

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<sup>226</sup> Treaty Concerning the Formation of a General Postal Union, *supra* note 11.

<sup>227</sup> Nicholas Fandos, Michael Tackett and Julie Hirschfeld Davis, *Trump Storms Out of White House Meeting With Democrats on Shutdown*, N.Y. TIMES (Jan. 9, 2019) ("He's like the Missouri mule who sits down in the mud and says, 'I'm not moving,'" said Senator John Kennedy, Republican of Louisiana"). The shutdown continued for another 14 days.

withdraw from the UPU, but also has said it is proceeding with a plan to institute ‘self-declared’ rates that could take effect within six months.”<sup>228</sup> If this is the outcome, there are a number of foreseeable costs and benefits to rejoining the UPU.

### 1. The Benefits of Being a UPU Member Country

The benefits of being a UPU member are significant, and should not be disregarded without proper consideration. With 192 member countries, the Universal Postal Union is very nearly universal in the truest sense.<sup>229</sup> This creates representation and voting rights for member nations, as well as representation in different bodies of the organization. Further, there are the benefits of ease, familiarity and understanding of the system in which nearly every nation operates. Having existed for nearly 150 years, the UPU is the second oldest international organization, pre-dating the United Nations. The UPU helped end a mess of bilateral agreements which created confusing postal structures, indecipherable taxes and fees, and dead-mail backlogs.<sup>230</sup> Although there is financial cost from terminal dues which adversely benefit or harm different nations,<sup>231</sup> the USPS reports greater financial benefits from international work than the reported costs.<sup>232</sup> By being a member, change can be elicited from the inside.

Additionally, the United States would receive the benefit of appearing to be masterful negotiators. The stated goal of beginning withdrawal mechanisms is to adjust the terminal dues rates, and rejoin the UPU hopefully within six months.<sup>233</sup> By adjusting the terminal dues through the fast-track negotiations, the United States appear victorious

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<sup>228</sup> See Heidi Vogt, *supra* note 204.

<sup>229</sup> *C.f.* UPU, *supra* note 114, with U.N. Member States, (date accessed 11/20/2018), <http://www.un.org/en/member-states> (recognizing 193 member-states and two non-member observer states).

<sup>230</sup> See section II. D., *supra*.

<sup>231</sup> See Greg Ip, *supra* note 216.

<sup>232</sup> See U.S. POSTAL SERVICE REPORTS FISCAL YEAR 2017 RESULTS, *supra* note 217.

<sup>233</sup> See Heidi Vogt, *supra* note 204 (“The U.S. has said it hopes to negotiate a solution that keeps it from having to withdraw from the UPU, but also has said it is proceeding with a plan to institute ‘self-declared’ rates that could take effect within six months”).

in their surprising declaration to withdraw, and walk away with great financial benefit. Further, by compromising and rejoining the UPU, the United States appears more committed to the goals and well-being of members of the singular postal territory. Another benefit is that the United States will also be able to stay at the forefront of postal advancements, including the expanding application of AED by the UPU,<sup>234</sup> and their recent efforts partnering with the INCB to establish a response to the opioid epidemic.<sup>235</sup>

These benefits are substantial. The ability to continue postal operations within the UPU with influence, a more financially agreeable structure of terminal dues, and the efficiency of maintaining an organization that has operated for 144-years is a substantially positive outcome. Yet the decision to remain within the UPU is not without any drawbacks.

## 2. The Costs of Being a UPU Member Country

The costs of rejoining the UPU will be felt both by the average citizen and by those who have orchestrated this withdrawal process. Whether financial or intangible, a number of effects of remaining with the UPU post-withdrawal claims can and will be costly. This includes the actual cost of terminal dues in the short term, as well as the money the United States pays to the organization, the appearance of weakness, both to domestic voters and international actors, and upsetting some of the top business leaders in the United States.

If the United States chooses to come back to the UPU after the withdrawal attempt, then the terminal dues will still be adversely affecting the United States. Their status of a category one nation is unlikely to change,<sup>236</sup> so they will still be charged a higher rate compared to developing nations. United States citizens wishing to ship internationally will ultimately bear these costs when they use the USPS for their international postal needs.<sup>237</sup> Additionally, costs shared by

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<sup>234</sup> See Second Extraordinary Congress, *supra* note 165.

<sup>235</sup> See UPU/INCB, *supra* note 191.

<sup>236</sup> See Janet M. Sorensen, *supra* note 159, at 8.

<sup>237</sup> See Jayme Smaldone, *Why It's Cheaper to Ship Goods From Beijing Than New Jersey: I run a 12-person company. Trump's decision to leave the Universal*

UPU member states, such as support for the IB,<sup>238</sup> would presumably still be incurred by the United States government and thus the taxpayer.

Appearances may not be entirely positive if the United States does choose to remain a member nation of the UPU. Even though this was the stated goal of the withdrawal mechanism, if the United States concedes to rejoin without substantial change to the terminal dues some may view the decision negatively. It has yet to be proven whether this President's hard-bargain style tactics truly help or hurt situations like these, and walking back the rhetoric without something to claim as a clear victory may hurt his public perception.<sup>239</sup> Potentially worse for the businessman President, however, would be the perception of what this does for American businesses small and large. One small business has become the poster-child of the struggles between American merchants and the UPU: Mighty Mug.<sup>240</sup> This small, twelve-person company from New Jersey has repeatedly noted the discrepancy in shipping prices for small parcels between American and Chinese merchants.<sup>241</sup> Being one of the more noted companies calling for withdrawal from the UPU, for the United States to rejoin without significant overhaul could accidentally give the appearance of being anti-small business as it makes them bear the costs. This would not be a positive change in appearance for the administration.

Large businesses have also been advocates for withdrawal or heavily altering the UPU. Amazon has recently become the world's

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Postal Union could help small businesses like mine, ATLANTIC (Oct. 24, 2018) (“We pay up to \$17.61 to mail a four-pound package, but a shipper in China pays \$3.67”).

<sup>238</sup> See Int'l Bureau, *supra* note 181.

<sup>239</sup> When referencing the recent shutdown ending without funds for a wall, “a Trump adviser offered a pretty stark assessment of what happened on the shutdown. ‘A humiliating loss for a man that rarely loses,’ the adviser said.” Kaitlan Collins et al., *Trump Concedes to Temporarily End Shutdown – without wall funding*, CNN (Jan. 25, 2019, 10:41 PM). The article also notes a drop in approval ratings.

<sup>240</sup> See generally Jayme Smaldone, *supra* note 237; and Jayme Smaldone, *This Subsidy for China Is Dumb as a Post: Overseas competitors undercut me thanks to an old mail treaty*, WALL STREET J. (Feb. 6, 2018, 7:27 PM); and Heidi Vogt, Austen Hufford, and Paul Ziobro, *Companies Split on U.S. Exit From Postal Pact Benefiting China*, WALL STREET J. (Oct. 18, 2018, 6:51 PM).

<sup>241</sup> *Id.*

most valuable public company,<sup>242</sup> and have been calling for change in the international postal structure for several years.<sup>243</sup> USPS, UPS and FedEx have also called for changes with the postal treaty arrangements of the United States.<sup>244</sup> These companies, besides having a very large and direct stake in the argument, also have considerable size, money, and persuasive power. To concede without change would be to risk the support of these corporations, and doing so publicly.

Rejoining the UPU now without the right circumstances would be equivalent to having the United States' bluff called in front of their trade rivals and the international community. The President and his staff have presented this event at home as an example of the President's ability to negotiate and win the deal. Without any change, that perception may prove negative for the administration, much in the way the recent government shutdown has. Small business and Large business allies alike may be left questioning the effectiveness of the President to bring them the best deal. Even further, the continued cost to the consumer and taxpayer for little or no added benefit would likely lead to this withdrawal tactic being generally viewed negatively. Public and business perception, and the financial costs of the organization and its policies would be felt if the United States were to rejoin the UPU without any perceived beneficial change. Yet these costs would be less than the costs of withdrawing all together. Either way, rejoining the UPU will likely be the best outcome for the United States; the

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<sup>242</sup> BBC News, *Amazon Becomes World's Most Valuable Public Company*, BBC (Jan. 8, 2019).

<sup>243</sup> See generally, e.g. Kenneth Corbin, *Amazon Calls for Renegotiating ePacket Deal with China*, ECOMMERCEBYTES (June 17, 2015, 12:19 PM), <https://www.ecommercebytes.com/2015/06/17/amazon-calls-renegotiating-epacket-deal-china/>; see also David Z. Morris, *The U.S. is pushing to reform the international postal treaty that subsidizes Chinese shipping*, FORTUNE (July 3, 2015), <http://fortune.com/2015/07/03/universal-postal-union-reform/> ("Few solid ways forward were offered by the witnesses, representing the State Department, FedEx, USPS, and Amazon").

<sup>244</sup> David Z. Morris, *The U.S. is pushing to reform the international postal treaty that subsidizes Chinese shipping*, FORTUNE (July 3, 2015), <http://fortune.com/2015/07/03/universal-postal-union-reform/>. ("Few solid ways forward were offered by the witnesses, representing the State Department, FedEx, USPS, and Amazon").

President and his administration should try to pacify their tumultuous relationship with the UPU before they actually must withdraw.

#### B. Costs and Benefits of Leaving the UPU

The withdrawal from the UPU may not lead to the type of reforms that the current administration would like to see, and they may choose to exit the organization. This comes with its own range of consequences, the most obvious being the need to renegotiate international shipping unilaterally with each and every nation the United States conducts business with.<sup>245</sup> However, not every consequence would necessarily be negative; in fact, some have applauded the move by the President to withdraw from the UPU.<sup>246</sup> In the circumstances of an actual withdrawal the greatest consequences, time lost and uncertainty, are both negatives, and can heavily outweigh the possible positive consequences.

The United States plans to institute its “self-declared” terminal rates, inside or outside of the UPU.<sup>247</sup> Obviously without having to seek approval of two-thirds of a group of 192 other nations, the implementation of self-determined prices will be easier. In this respect, an actual withdrawal will be beneficial. Additionally, with the ability to set rates for the United States itself, commercial carriers and companies like Amazon will be able to set more reasonable prices for merchants and goods manufactured domestically. This would be directly in-line with the President’s inaugural promise of “America first, America first.”<sup>248</sup> There is a positive perception associated with sticking to one’s beliefs even if things falter, and carrying these withdrawal mechanisms to term would be perceived as a show of strength in bargaining with the international community.<sup>249</sup> With this perception among small businesses and the calls of large businesses in

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<sup>245</sup> See Heidi Vogt, *supra* note 204.

<sup>246</sup> See Greg Ip, *supra* note 216.

<sup>247</sup> See Heidi Vogt, *supra* note 204.

<sup>248</sup> BBC News, *Donald Trump: ‘America First, America First’* (Jan. 20, 2017).

<sup>249</sup> Accord Jayme Smaldone, *This Subsidy for China Is Dumb as a Post: Overseas competitors undercut me thanks to an old mail treaty*, WALL STREET J. (Feb. 6, 2018 7:27 PM) (relating international shipping to boxing).

the industry answered,<sup>250</sup> the public reception of leaving the UPU may be viewed as a positive for the President.

The negative effects of leaving the UPU would potentially be swift, immense, and long-lasting in duration. First, if the United States were to leave the UPU, they would have to renegotiate postal agreements with every nation they wish to exchange mail with.<sup>251</sup> “If the U.S. were to withdraw from the UPU, it would lose access to global processing and coding systems that make international mail possible, and it would have to negotiate bilateral postal agreements with every individual country”.<sup>252</sup> Whether or not the United States could create treaties with different groups of nations as a whole (for example, the European Union or the African Postal Union), or have to result to each nation individually would depend on the group’s granted powers and capacity to bind themselves with treaties.<sup>253</sup> These negotiations will take some time, and the treaties may or not be self-executing until recognized so by the courts.<sup>254</sup> While these negotiations are being conducted and laws written the public, merchants, and others who rely on international mail are left without clear answers of how to proceed, or any real parallel on how to approach the deliveries. Without the “last-mile” terminal dues,<sup>255</sup> the return of dead-mail may become a large problem for the United States in the interim until treaties are ratified.<sup>256</sup>

Aside from the uncertainty in the new procedure for international mail, and its new costs, there is also uncertainty in the

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<sup>250</sup> *Supra* note 243.

<sup>251</sup> Director General Bishar Hussein warns that without the UPU, the United States will be forced to renegotiate mail agreements with every individual nation. Heidi Vogt, *Global Postal System Fast-Tracks Rate Review Following U.S. Gripe*, WALL ST. J. (Oct. 23, 2018, 5:50 PM), <https://www.wsj.com/articles/global-postal-system-fast-tracks-rate-review-following-u-s-gripe-1540317224>.

<sup>252</sup> *Id.*

<sup>253</sup> ANTHONY AUST, *MODERN TREATY LAW AND PRACTICE* 60 (CAMBRIDGE UNIV. PRESS, 3d. 2013).

<sup>254</sup> *Id.* at 174.

<sup>255</sup> See Greg Ip, *Send Word: Trump Is Right to Fight Some Global Rules*, WALL STREET J. (Oct. 24, 2018, 9:00 AM).

<sup>256</sup> Which may or may not proceed swiftly, depending upon the future political environment.

perception that the United States will have in the international community. With the universal reach and historical presence of the UPU, it is one of the few things which may arguably represent a “*jus cogens* norm be[ing] ‘accepted and recognized by the international community of States as a whole.’”<sup>257</sup> If that is the case, participation in the general recognition of a single postal territory may be required of the United States. This effort to stand out as the single dissenting nation may distance the United States from some perspectives, affecting their ability to conduct efficient international post. Of course, the entire issue could also go the other direction if the withdrawal ends positively for the United States. The influence and persuasive power of the United States draws other nations to reject the UPU, creating a wave of withdrawal requests which would threaten to sink the second oldest international organization. With this being the first request of its kind, the uncertainty around the possible outcomes is stifling. The United States could also simply just withdraw, then immediately re-accede to the treaty,<sup>258</sup> with a reservation that it would not pay terminal dues.<sup>259</sup>

While some businesses may benefit from the United States’ ability to declare its own terminal rates, the benefit does not outweigh the consequences. Uncertainty is one of the largest roadblocks to economic growth for the risk-averse, and the decision to withdraw in actuality is rife with uncertainty. The time for a new postal system to be imagined, created, and implemented with a single nation for every type of mail, post, and parcel is itself reasonably significant. To repeat the process up to 192 times creates a long period of uncertainty, where many in the international community would not know how to regard the mail of the United States. The risk of dead-mail, international disdain, and money and time lost are greater than the benefits of the money saved by terminal dues and the proverbial feather in the cap for a negotiator.

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<sup>257</sup> Markus Petsche, *Jus Cogens as a Vision of the International Legal Order*, 29:2 PENN. INT’L. L. REV. 233, 240 (2010).

<sup>258</sup> See Anthony Aust, *supra* note 253, at 268.

<sup>259</sup> Which carries its own set of numerous uncertainties in reaction.

## V. SUMMARY AND CONCLUSION

The history of the Universal Postal Union, opined English social commentator H. G. Wells in 1940, was “surely something that should be made part of the compulsory education of every statesman and publicist.” Sadly, however it remained largely unknown. “Never in my life,” Wells added, had he met a “professional politician who knows anything whatever or wanted to know anything about it.”<sup>260</sup>

The UPU has been quietly and efficiently operating for over 144 years. The fact that so few individuals know about it speaks to the efficiency, public comfort and general acceptance of this entity and its work. In 1969, the UPU while trying to balance fairness for all nations created terminal dues. As the economy of the new millennia changed, these terminal dues became drastically different for many nations, detrimentally so to some. Alongside the explosion of e-commerce, the shipping of illegal narcotics, particularly synthetic opioids from overseas, began an exponential growth in the past two decades. This has caused the rates of deaths from drug overdoses in the United States to skyrocket past many other leading causes of death, including automobile accidents in 2016.

The United States tried to address the issue of drugs in the mail with different pieces of legislation, while the 45<sup>th</sup> President has launched a bold negotiation tactic with the UPU over the issue of terminal dues. The United States has felt the effects of synthetic opioids and terminal dues greatly in the past decade, but trying to solve these issues lands their actions into novel places. While uncertainty looms, one thing appears to show a little more clarity than the rest; that these actions need to be solved with the help from all involved. The United States should try to work with the international community to

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<sup>260</sup> Richard R. John, *The Public Image of the Universal Postal Union in the Anglophone World, 1874-1949*, 38, in *INTERNATIONAL ORGANIZATIONS AND THE MEDIA IN THE NINETEENTH AND TWENTIETH CENTURIES: EXORBITANT EXPECTATIONS* (Jonas Brendebach, Martin Herzer, and Heidi Tworek ed., 2018)

develop a mutually beneficial response which does not dissuade other nations and investors from assisting in the outcome.<sup>261</sup>

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<sup>261</sup> After the conclusion of this project, the United States ultimately decided to remain a member of the UPU. Nick Cumming-Bruce, *U.S. Will Remain in Postal Treaty After Emergency Talks*, N.Y. TIMES (Sept. 25, 2019) <https://www.nytimes.com/2019/09/25/business/universal-postal-union-withdraw.html>. The United States will be able to determine their own remuneration rates, as agreed upon by the Third Extraordinary Congress. See UPU, Press release, *UPU member countries reach unanimous agreement on postal remuneration rates* (Sept. 9, 2019) [http://news.upu.int/no\\_cache/nd/upu-member-countries-reach-unanimous-agreement-on-postal-remuneration-rates/](http://news.upu.int/no_cache/nd/upu-member-countries-reach-unanimous-agreement-on-postal-remuneration-rates/); UPU, Press release, *UPU third Extraordinary Congress wraps with strong solidarity message*, (Sept. 26, 2019) [http://news.upu.int/no\\_cache/nd/upu-third-extraordinary-congress-wraps-with-strong-solidarity-message/](http://news.upu.int/no_cache/nd/upu-third-extraordinary-congress-wraps-with-strong-solidarity-message/). There has even been a cordial meeting between Director General of the Universal Postal Union Bishar Abdirahman Hussein and United States President Donald Trump. “Mr Hussein said, ‘I am convinced that the maintenance of the worldwide postal system is a victory for everyone on this planet.’” UPU, Press release, *UPU head meets with US President following Geneva agreement on remuneration rates* (Oct. 16, 2019) [http://news.upu.int/no\\_cache/nd/upu-head-meets-with-us-president-following-geneva-agreement-on-remuneration-rates/](http://news.upu.int/no_cache/nd/upu-head-meets-with-us-president-following-geneva-agreement-on-remuneration-rates/). Hopes are high going forward.